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Sup Ct
Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 373

**CHARLOTTE CROSS JUST AND ANNE ELISE
GRUNER, PETITIONERS,**

vs.

**ALMA CHAMBERS, AS EXECUTRIX OF THE ES-
TATE OF HENRY C. YEISER, JR., AS OWNER OF
THE AMERICAN YACHT "FRIENDSHIP II"**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED AUGUST 24, 1940.

CERTIORARI GRANTED OCTOBER 21, 1940.

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On September 1, 1936, PETITION AND LIBEL FOR LIMITATION OF LIABILITY, was filed in words and figures following, to-wit:

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION.
IN ADMIRALTY, 147-M.

IN THE MATTER OF:

THE AMERICAN YACHT "FRIENDSHIP II."

To the United States District Court, Southern District of Florida, Tampa Division. In Admiralty.

The libel and petition of Alma Chambers, as executrix and as ancillary executrix of the last will and testament of Henry C. Yeiser, Jr., late owner of the American Yacht, "Friendship II", in a cause of limitation of liability, civil and maritime, alleges as follows:

First: The libelant is the duly qualified and appointed executrix of the last will and testament of Henry C. Yeiser, Jr., having been appointed by the Probate Judge of Hamilton County, Ohio, and she is also the duly qualified and appointed ancillary executrix of the last will and testament of Henry C. Yeiser, Jr., having been appointed by the County Judge of Dade County, Florida; that as such executrix and ancillary executrix, she has the possession of the said yacht; that Henry C. Yeiser, Jr., died on March 5, 1936, and, at the time of his death, owned the said yacht and owned it at the times herein-after mentioned.

Second: The said yacht is of 93 gross tons; officially numbered 222117; is a cruising houseboat yacht, and was built by Mathis Yacht Building Company, at Camden,

New Jersey, in 1922; length 70 feet; breadth, 17.9 feet; depth, 9.2 feet; draft, 4 feet; powered with two six-cylinder, speedway gasoline engines, and is, on information and belief, of the approximate value of \$5,000, and has always been used exclusively as a pleasure yacht on navigable waters.

Third: On February 28, 1936, the said yacht, with its owner, Henry C. Yeiser, Jr., and Charlotte Just and Anne Gruner, and another, in addition to the master and crew, on board, left the Port of Miami, Florida, for a pleasure cruise in Florida waters and returned to the Port of Miami on March 2, 1936. While on the said

2 cruise, the said Charlotte Just and Anne Gruner, imbibed in intoxicating liquors, and the said Charlotte Just and the said Anne Gruner became ill, and have since claimed they were made ill through the escape of monoxide or other gas from piping in the said yacht, on account of which they claim they have suffered damages in large sums of money and have made claims against the said yacht, and the owner thereof, and your petitioner for the payment of large sums of money as damages.

Fourth: If monoxide or other gas escaped from the piping in the said yacht, it was not due to the carelessness or negligence of the owner or officers or members of the crew of the said yacht; and injuries caused thereby, if any, were occasioned and incurred by the said Charlotte Just and the said Anne Gruner without the privity or knowledge of the owner of the said yacht or of your petitioner; and, if monoxide or other gas escaped from the piping in the said yacht, and caused injury and damage to the said Charlotte Just and the said Anne Gruner, it was due wholly to an unforeseen and unavoidable accident for which the said yacht, the owner thereof, and your petitioner are not liable.

Fifth: The said Charlotte Just and the said Anne Gruner, while making demands on the owner of the said yacht and on your petitioner for the payment of large sums of money for the damage and injury alleged to have been suffered by them in the manner hereinbefore alleged, have not stated the precise sums of money that they demand as compensation for the damage and injury alleged to have been suffered by them. Neither of the said claimants has yet actually begun suit against the said yacht nor against the owner of the said yacht nor against your petitioner, but Charlotte Cross Just has petitioned the Probate Court of Hamilton County, Ohio, for permission to file a claim of \$150,000.00 against the Estate of Henry C. Yeiser, Jr., and Anne Elise Gruner has petitioned the Probate Court of Hamilton County, Ohio, for permission to file a claim of \$50,000.00 against the Estate of Henry C. Yeiser, Jr.

Sixth: There was and is no freight pending by reason of the said trip in question.

Seventh: Petitioner desires to claim the benefit of the provisions of Sections 183, 184, and 185, Title 46, United State Code Annotated, and the various Acts amendatory thereof and supplemental thereto, and in this
 3 proceeding, by reason of the facts hereinbefore set forth, to contest the liability of the said yacht, the owner thereof and your petitioner, to any extent whatsoever, for any and all damage and injury done, occasioned or incurred by the said Charlotte Just and the said Anne Gruner by reason of the alleged escape of monoxide or other gas from the piping in the said yacht, and, to that end, the petitioner desires to surrender the said yacht during the pendency of this proceeding to a trustee to be appointed by this Court.

Eighth: Petitioner avers, on information and belief, that there is no lien on the said yacht prior or paramount to any lien which may have accrued by reason of the matters aforesaid; that the said yacht is in the same condition as when she made the trip described in paragraph three hereof, and that she is now of the same market value as then, and has not deteriorated since then.

Ninth: The said yacht is now in the Port of Fort Myers in the Southern District of Florida, Tampa Division, and within the jurisdiction of this Court.

Tenth: All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, Petitioner prays that this Court make an order, on such terms as would be just to your petitioner and to all persons having liens, or claims of liens against the said yacht, appointing a trustee to whom the said yacht may be surrendered during the pendency of this proceeding, and appoint a commissioner to receive proofs of claims in accordance with the rules and practice of this Court, and issue a monition to all persons claiming damages by reason of any injury done, occasioned or incurred because of the matters and things hereinbefore alleged, citing them to appear before the said commissioner at or before a time to be named in the said writ, and make proof of their respective claims and to appear and answer upon oath all and singular the premises; and issue its injunction restraining the commencement or prosecution of any and all actions, suits or proceedings of any kind by the said Charlotte Just and the said Anne Gruner, against the said yacht, the owner thereof, and your petitioner, other than in the present proceeding; and that the Court adjudge that the said owner

and your petitioner are not liable for any demand or claim
 whatsoever in consequence of the said claims of
 4 the said Charlotte Just and the said Anne Gruner,
 or, if such liability ever existed, then that the
 said owner and your petitioner be discharged therefrom
 by the surrender of the said yacht, and that your peti-
 tioner may have such other and further relief in the
 premises as may be just.

KIRLIN, CAMPBELL, HICKOX,
 KEATING & McGRANN,
 By VERNON S. JONES,

120 Broadway,
 New York City.

and
 LOFTIN, STOKES & CALKINS,
 By JNO. P. STOKES,

627 Ingraham Building,
 Miami, Florida.

Proctors for the Libelant and
 Petitioner.

State of Ohio,
 County of Hamilton.

Before the undersigned, a Notary Public in and for
 the State of Ohio and County of Hamilton, personally
 appeared Alma Chambers, as executrix and as ancillary
 executrix of the last will and testament of Henry C.
 Yeiser, Jr., deceased, who, being by me first duly sworn,
 says: That she is the libelant and petitioner in the above
 and foregoing libel and petition; that she has read over
 the same, is familiar with its allegations; and that the
 allegations therein contained are true, except such mat-
 ters as are stated on information and belief, and as to
 these she says that she verily believes the same to be
 true.

ALMA CHAMBERS.

Sworn to and subscribed before me this August 31st, 1936.

(Notarial Seal)

MARIE A. ZURLAGE,

Notary Public, County of
Hamilton, State of Ohio.

My commission expires June 22, 1937.

5 On September 1, 1936, EXEMPLIFIED COPY
OF LETTERS TESTAMENTARY issued to Alma
Chambers, as Executrix of the Last Will and Testament
of Henry C. Yeiser, Jr. by the Probate Court of Hamilton
County, Ohio, was filed.

On September 1, 1936, the Court entered an ORDER
APPOINTING JOHN WOOLSLAIR TRUSTEE to receive
the transfer of title to the Yacht Friendship II.

On September 8, 1936, AFFIDAVIT OF PROCTORS
for the Libelant certifying that the Yacht Friendship II
had been transferred to the Trustee, was filed.

On September 8, 1936, the Court entered an ORDER AP-
POINTING JOHN WOOLSLAIR as Commissioner, before
whom Proof of Claims should be filed.

On September 9, 1936, MONITION was issued to
Charlotte Just and Anne Gruner commanding them to
present their respective claims to the Commissioner.

On September 28, 1936, the Claimants, Charlotte Just and Anne Gruner filed their ACCEPTANCE OF SERVICE OF THE MONITION.

On September 28, 1936, the Trustee filed a PETITION FOR AUTHORITY TO SELL THE YACHT FRIENDSHIP II.

On September 28, 1936, the Trustee filed NOTICE, and PROOF OF SERVICE thereon, of his intention to apply to the Court for an Order authorizing the sale of the Yacht Friendship II.

6 On September 26, 1936, the Court entered an ORDER AUTHORIZING THE TRUSTEE TO SELL THE YACHT FRIENDSHIP II, which Order was filed September 28, 1936.

On October 6, 1936, the Trustee filed PROOF OF PUBLICATION of the Notice of said Sale.

On October 26, 1936, the Libelant and the Claimants, Just and Gruner, filed their JOINT PETITION FOR THE TRANSFER OF THE CAUSE from the Tampa Division to the Miami Division of the District Court; and, on October 26, 1936, the Court entered an Order granting the said Petition.

On October 28, 1936, the Trustee filed his REPORT OF THE SALE OF THE YACHT FRIENDSHIP II, together with his REPORT OF RECEIPTS AND DISBURSEMENTS with supporting vouchers.

On October 28, 1936, the Commissioner filed the REPORT OF CLAIMS PRESENTED and OBJECTIONS thereto. The claim of Charlotte Cross Just is in words and figures following, to wit:

7 CLAIM OF CHARLOTTE CROSS JUST.

In the District Court of the United States, for the Southern
District of Florida, Miami Division.

In the Matter of:

The American Yacht
"Friendship II".

In Admiralty, No. 3522 Civ.

City of St. Louis,
State of Missouri.

Charlotte Cross Just, being first duly sworn, says: That on the 1st day of March, 1936, at the invitation of Henry C. Yeiser, Jr., now deceased, I was a guest for a cruise from Miami, Florida, and return, aboard the yacht of the said decedent, "Friendship II", and that the said yacht was on coastal waters somewhere near the vicinity of Miami, Florida; that on the said night of March 1st, 1936, or the early morning of March 2, 1936, while I was asleep in the stateroom which had been

assigned to me for said cruise by the said Henry C. Yeiser, Jr., on the said yacht, I was overcome and rendered unconscious by carbon monoxide or some other noxious gas, which had been permitted to escape from the motors and exhaust pipes of the said yacht, and into the cabin assigned to me as aforesaid, where I was sleeping as aforesaid; that as the direct result thereof, my entire system was poisoned, and I have sustained severe and permanent injuries to my physical and nervous system and health; that at said time the said yacht was unseaworthy, and the exhaust pipes in the said yacht had holes in them and were otherwise in such a defective condition, as to permit carbon monoxide or other noxious gas to escape therefrom and into the stateroom which had been assigned to me as aforesaid, and in which I was sleeping as aforesaid.

That as the direct result thereof, since the date of the injuries I have been, and still am, under the constant care and attention of physicians and nurses, and will be compelled to remain under their care in the future for an undetermined period; and I have been forced
 8 to incur, and for an undetermined period of time in the future will incur, great expense for hospital, medical, surgical, and nursing attention, and for medicines, in and about attempting to cure myself of the said injuries; that the said injuries are permanent and are the direct results of the said negligence of the said Henry C. Yeiser, Jr., in assigning to me the said stateroom aboard his said yacht, when he knew, or should have known, that the said yacht was unseaworthy, and that said stateroom was unsafe, and that said motors and exhaust pipes were defective and in such condition that carbon monoxide gas or other noxious gas was escaping or would likely escape therefrom as aforesaid, into the stateroom, which he had assigned to me, and in which I was sleeping as aforesaid, and in permitting said gas to escape into said stateroom, as aforesaid.

That I am entitled to maintain an action to recover damages for the said injuries and losses thus occasioned, and hereby claim One Hundred and Fifty Thousand Dollars, (\$150,000.00) as the amount of such injuries, damages, and losses, no part of which has been paid to me.

CHARLOTTE CROSS JUST.

Sworn to and subscribed before me, this October 20, 1936.

(N. P. Seal) E. E. CARPENTIER,
Notary Public, State of Missouri.

My commission expires: August 8, 1940.
11/bb/1/6.
10/17/36.

9

In Admiralty, No. 3522 Civ.

(Title Omitted.)

The CLAIM OF ANNE ELISE GRUNER is in words and figures following, to wit:

Anne Elise Gruner, being first duly sworn, says: That on the 1st day of March, 1936, at the invitation of Henry C. Yeiser, Jr., now deceased, I was a guest for a cruise from Miami, Florida, and return, aboard the yacht of the said decedent, "Friendship II", and that the said yacht was on coastal waters somewhere near the vicinity of Miami, Florida; that on the said night of March 1st, 1936, or the early morning of March 2, 1936, while I was asleep in the stateroom which had been assigned to me for said cruise by the said Henry C. Yeiser, Jr., on the said yacht, I was overcome and rendered unconscious by carbon monoxide or some other noxious gas, which had been permitted to escape from the motors and ex-

haust pipes of the said yacht, and into the cabin assigned to me as aforesaid, where I was sleeping as aforesaid; that as the direct result thereof, my entire system was poisoned, and I have sustained severe and permanent injuries to my physical and nervous system and health; that at said time the said yacht was unseaworthy, and the exhaust pipes in the said yacht had holes in them and were otherwise in such a defective condition, as to permit carbon monoxide or other noxious gas to escape therefrom and into the stateroom which had been assigned to me as aforesaid, and in which I was sleeping, as aforesaid.

That as the direct result thereof, since the date of the injuries I have been, and still am, under care and attention of physicians, and will be compelled to remain under their care in the future for an undetermined
 10 period; and I have been forced to incur, and for an undetermined period of time in the future will incur, great expense for hospital, medical, surgical, and nursing attention, and for medicines, in and about attempting to cure myself of the said injuries; that the said injuries are permanent and are the direct results of the said negligence of the said Henry C. Yeiser, Jr., in assigning to me the said stateroom aboard his said yacht, when he knew, or should have known, that the said yacht was unseaworthy, and that said stateroom was unsafe, and that said motors and exhaust pipes were defective and in such condition that carbon monoxide gas or other noxious gas was escaping or would likely escape therefrom as aforesaid, into the stateroom, which he had assigned to me, and in which I was sleeping as aforesaid, and in permitting said gas to escape into said stateroom as aforesaid.

That I am entitled to maintain an action to recover damages for the said injuries and losses thus occasioned.

and hereby claim Fifty Thousand Dollars, (\$50,000.00), as the amount of such injuries, damages, and losses, no part of which has been paid to me.

ANNE ELISE GRUNER.

Sworn to and subscribed before me, this October 20th, 1936.

(N. P. Seal)

W. E. WALKER,

Notary Public State of Missouri.

My commission expires July 22, 1938.

11/bb/1/6.

10.17/36.

The OBJECTION TO THE CLAIM OF ANNE ELISE GRUNER is in words and figures following, to wit:

11

In Admiralty, No. 3522-Civ.

(Title Omitted.)

To: Evans, Mershon & Sawyer, M. L. Mershon, E. O. Mehrtens, Proctors for Anne Elise Gruner:

Please take notice That the Petitioner herein objects to allowance of the claim filed in this cause by, or on behalf of, Anne Elise Gruner, and prays that the said claim may be disallowed and excluded unless established by further legal proof upon notice to the Proctors for the Petitioner and authorized in the manner provided by law.

Dated at Miami, Florida, this October 26, 1936.

Yours, etc.,

KIRLIN, CAMPBELL, HICKOX,

KEATING & McGRANN,

and

L. CFTIN, STOKES & CALKINS,

By JNO. P. STOKES,

Proctors for the Petitioner.

The OBJECTION TO THE CLAIM OF CHARLOTTE CROSS JUST is in words and figures following, to wit:

12 In Admiralty, No. 3522-Civ.

(Title Omitted.)

To: Evans, Mershon & Sawyer, M. L. Mershon, W. O. Mehrtens, Proctors for Charlotte Cross Just:

Please take notice That the Petitioner herein objects to allowance of the claim filed in this cause by, or on behalf of, Charlotte Cross Just, and prays that the said claim may be disallowed and excluded unless established by further legal proof upon notice to the Proctors for the Petitioner and authorized in the manner provided by law.

Dated at Miami, Florida, this October 26, 1936,

Yours, etc.,

KIRLIN, CAMPBELL, HICKOX,
KEATING & McGRANN,
and

LOFTIN, STOKES & CALKINS,
By JNO. P. STOKES,
Proctors for the Petitioner

The COMMISSIONER'S LIST OF CLAIMS PRESENTED TO HIM, is in words and figures following, to wit:

13 In Admiralty, No. 147-M.

(Title Omitted.)

To the United States District Court for the Southern District of Florida:

By order entered herein on September 5, 1936, the undersigned was appointed Commissioner to receive claims

on or before October 26, 1936. I hereby report that the following claims have been presented to me and are annexed hereto:

1. Charlotte Cross Just, \$150,000.00.
2. Anne Elise Gruner, \$50,000.00.

There was also filed with me, on behalf of Alma Chambers, as domiciliary and as ancillary executrix of the Last Will and Testament of Henry C. Yeiser, Jr., objections to each of the above mentioned claims.

No other claims were filed. (J. W.)

Accompanying this report are the claims filed with me and the objections thereto also filed with me.

Dated at Fort Myers, Florida, October 27, 1936.

Respectfully submitted,
JOHN WOOLSLAIR,
Commissioner.

On October 28, 1936, the Trustee filed his Affidavit as to the Services Performed by him and his personal expenses.

On October 15, 1936, the PETITION OF CHARLOTTE JUST AND ANNE GRUNER FOR LEAVE TO INSPECT THE SAID YACHT AND TO IMPOUND THE EXHAUST PIPES, was filed in words and figures following, to wit:

14

PETITION.

In Admiralty, 147-M-Adm.

(Title Omitted.)

Come now Charlotte Just and Anne Gruner, severally, by their undersigned proctors, and respectfully show.

1. This is a proceeding for limitation of liability instituted herein upon the libel and petition of Alma Chambers, as Executrix and as Ancillary Executrix of the Last Will and Testament of Henry C. Yeiser, Jr., late owner of the American Yacht "Friendship II". That as more fully appears from said libel and petition of said Alma Chambers, as Executrix, the said proceeding seeks exoneration from or limitation of liability unto the said Charlotte Just and Anne Gruner, for injuries claimed to have been received by them through the escape of carbon monoxide or other gases from the piping in said Yacht during the lifetime of said owner thereof, Henry C. Yeiser, Jr.; and it is further alleged in said petition for limitation and exoneration, as aforesaid, that if said monoxide or other gas escaped from the piping in said Yacht it was not due to the carelessness or negligence of the owner or officers or members of the crew of said Yacht, but was due wholly to unforeseen and unavoidable accident, for which the said Yacht, the owner thereof, and the petitioning Executrix are not liable; and that if said gas escaped, the injuries to these petitioners, if caused thereby, were occasioned and incurred by these petitioners without

privity or knowledge of the owner of said Yacht or of said petitioning Executrix.

2. That the petitioning Executrix offered to surrender and did surrender the said Yacht "Friendship II" unto John Woolslair, Esquire, Trustee appointed by this Court; and thereafter, upon petition of said John Woolslair, as Trustee, this Court herein entered an order directing the sale of said Yacht "Friendship II", her engines, tackle, apparel and furniture, and a Chris-Craft motor launch, to be sold on board said Yacht "Friendship II" at the Port of Fort Myers, at public auction, after giving not less than ten days' notice of such sale by publication, as more fully appears from said order dated September 26, 1936, of record in this cause.

3. That these petitioners-claimants, Charlotte Just and Anne Gruner, have been allowed by order of Court herein until October 26, 1936, within which to file their claim and answer to said petition of said Executrix, and they will within said time file herein their said answer to said petition and their claim setting out their said claim from which said Executrix seeks exoneration and against which said Executrix seeks said limitation of liability. That these petitioners claim that while they were sleeping in the large stateroom at the stern of said Yacht, on the night of March 1, or the morning of March 2, they were severally overcome by carbon monoxide or other poisonous gas escaping from the motors' exhaust pipe or other piping and equipment of said Yacht. That these claimants were guests of said Henry C. Yeiser, Jr., upon said Yacht and were assigned to said sleeping quarters by him. That said sleeping quarters of these claimants were immediately over the exhaust pipes which ran from the motors of said Yacht to the stern of said Yacht, and there were certain vents and openings from the bilge of said Yacht in which said exhaust pipes were located di-

rectly into the said sleeping quarters of these claimants, all of which the said Henry C. Yeiser, Jr., well knew at the time he assigned said sleeping quarters to these claimants. That at and before the time these
 16 claimants were injured, as aforesaid, one or more of such exhaust pipes was defective and unsafe, in that it or they permitted gases from the combustion in said motors to escape from said exhaust pipes into the bilge of said Yacht and into the stateroom where these claimants were sleeping, as aforesaid.

4. That the sale of said Yacht was advertised by said Trustee to be held on October 3, 1936, at 1:00 o'clock P. M.; that the undersigned proctors for said Charlotte Just and Anne Gruner procured permission from said Trustee to make an inspection of the said Yacht and went aboard said Yacht about 11:00 o'clock A. M., on October 8, for that purpose, and made a partial inspection, that is to say, inspected the staterooms, engine room and other quarters upon said Yacht, but when they announced that they desired to inspect the said exhaust pipes, the Captain in charge of said Yacht (who is Captain Fred Roberts, the same captain who was in charge of said Yacht at the time these claimants received their injuries, as aforesaid) stopped them and refused to permit them to do so, pending the arrival of the Trustee to make said sale. That upon the arrival of said Trustee at said Yacht, about 12:40 P. M., said Trustee permitted said proctors for these claimants to continue the said inspection. That a partial inspection only was had and made, for a period of about twenty minutes up to the time of said sale at 1:00 o'clock, that is to say, an inspection was made of only a part of the exhaust pipe on the port side of said Yacht, and no opportunity was afforded for inspection of that entire exhaust pipe nor any part of the exhaust pipe in the bilge of said Yacht on the starboard side.

5. That the bidding at said sale started promptly at one o'clock, and John P. Stokes, Jr., who is an associate of the firm of Loftin, Stokes & Calkins, proctors for the petitioning Executrix, bid in and purchased said Yacht, in the name of "John P. Stokes, Jr., Agent."

17 That immediately after said sale, said John P. Stokes, Jr., flatly refused to permit said proctors for these claimants and their surveyor to inspect or see the said exhaust pipes, or any of them.

6. That said exhaust pipes consist of several lengths joined together with flanges. That as a result of such partial inspection, the said proctors and the surveyor for these claimants found that one length of said exhaust pipe on the port side was surrounded by rubber or some other composition, which was strapped around said exhaust pipe and held in shape by metal strips to prevent leakage therefrom, which patch appeared to be of recent origin. That the said defective length of exhaust pipe is located in the bilge of said Yacht, only a few feet from the stateroom in which these claimants were sleeping and from the vants which opened from said bilge into said stateroom.

That an inspection of each of said exhaust pipes in their entirety, and of their condition and the condition of their several joints and connections, is necessary and material to the making out of these claimants' case and claim and is material to the proper determination of the issues and questions in dispute in this cause. That the petitioner who is seeking limitation of, and exoneration from, liability is, as aforesaid, seeking to prevent these claimants from ascertaining what evidence is in existence and will be available to them in proving the case which they must make out, charge and prove, and to meet the issues of fact presented by petitioner's said petition for limitation and exoneration.

7. That immediately after said sale, the Captain of said yacht announced that he was going to move the said yacht and take it to a dry dock at once, and that these claimants believe, and here show, that upon confirmation of said sale said yacht "Friendship II" will be moved and said exhaust pipes, and particularly the defective section thereof above mentioned, will either be removed from said yacht or disposed of, or taken out of the jurisdiction of the Court, or otherwise made unavailable to these claimants and to the Court as evidence in the trial of said cause and the issues therein.

18 That said defective link of exhaust pipe upon the port side, which is strapped on the outside, as aforesaid, should be impounded as a material exhibit herein, under the order of the Court, and such other portions of each and both of said exhaust pipes as may be found upon such inspection to be defective should likewise be impounded as material exhibits under the order of the Court, to be produced subject to the Court's order.

Wherefore, the Premises Considered, These Claimants Pray:

1. That confirmation of said sale be stayed until the further order of the Court, after notice to these claimants.

2. That pending confirmation of said sale and while said yacht is still in the custody and jurisdiction of this Court, these claimants, their proctors and representatives may be permitted to inspect the said exhaust pipes and the condition thereof, under such supervision of this Court or in conjunction with an inspector to be appointed by the Court, as the Court may direct, and that any changes in the condition of said yacht, or of said exhaust pipes, may be restrained until the completion of said inspection.

3. That the Court may, upon such terms and conditions as it may deem advisable, order the said defective link of exhaust pipe, with the said strap on the outside thereof, on the port side of said yacht, to be identified and properly marked, and delivered to the Clerk of this Court, to be held and produced at the trial, and subject to the inspection of the parties to this cause; and that any other portions of said exhaust pipes which may be found to be in a defective condition may likewise be so impounded.

EVANS, MERSHON & SAWYER,

M. L. MERSHON,

W. O. MEHRTENS,

Proctors for Claimants, Charlotte Just and Anne Gruner.

19 State of Florida,
County of Dade.

Before me, the undersigned authority, personally appeared M. L. Mershon and W. O. Mehrtens, who, being first duly sworn, say that they are the proctors for claimants, Charlotte Just and Anne Gruner, on whose behalf the foregoing petition is filed; that the matters set forth in said petition are true, except those which are set forth upon information and belief, and as to those, affiants severally are informed and believe, respectively, that they are true.

M. L. MERSHON,

W. O. MEHRTENS.

Sworn to and subscribed before me, this October 9, 1936.

(N. P. Seal)

BESS ENNIS,

Notary Public, State of Florida
at Large.

My commission expires: 12/4/36.

On October 9, 1936, an Order was entered, and filed on October 15, 1936, directing the Trustee and the purchaser of the said Yacht to desist from interfering with the structural condition of the said Yacht with reference to the exhaust pipes, which Order is in words and figures following, to wit:

20

ORDER.

In Admiralty, No. 147-M.

(Title Omitted.)

This cause came on to be heard on the Petition of Charlotte Just and Anne Gruner, claimants, this day filed before the Court, upon informal notice to Counsel for Alma Chambers, as Executrix and as Ancillary Executrix of the last Will and Testament of Henry C. Yeiser, Jr., from which Petition it appears there is no effort on the part of the Petitioners to upset the sale, but only to obtain inspection of parts of the Yacht as set out in said Petition, and to impound evidence; and the Counsel for the said Executrix having objected to said Petition and to the entry of this Order, on grounds to be set forth in written objections to be filed in this cause as of the date of this order; and the Court being advised in the premises:

It Is Ordered that the said Petition be further brought on to be heard at 12 o'clock noon, Wednesday, October 14, 1936, and that notice of said hearing be given to both the Trustee and the Purchaser of the said Yacht; and that nothing herein shall be construed as a disapproval of the sale heretofore made as reported in said Petition, but that, pending said hearing on October 14, 1936, aforesaid, the Trustee and the Purchaser of said Yacht shall desist from interfering with the structural condition of

the said Yacht with reference to the exhaust pipes and all connections.

A copy of this Order and the said Petition shall be forthwith served on the Trustee and on the Purchaser of the said Yacht.

Ordered and done at Miami, Florida, this October 9, 1936.

JOHN W. HOLLAND,
District Judge.

21

ORDER.

In Admiralty, No. 147-M.

(Title Omitted.)

On October 15, 1936 there was entered and filed an ORDER PROVIDING FOR THE INSPECTION OF THE SAID YACHT AND IMPOUNDING THE EXHAUST PIPES, which Order is in words and figures following, to wit:

This cause came on to be heard upon the application of counsel for the claimants, Charlotte Just and Anne Bruner, for authority to inspect the exhaust pipes and connections on board the American yacht "Friendship II", and to impound the same, or certain parts thereof; and said counsel for claimants having agreed in Open Court with the purchaser at the Trustee's sale, S. M. Becker, Esq., for such inspection by claimants, their counsel and representatives, on Tuesday, October 13, 1936, at Fort Myers, Florida, where said yacht now lies, and for then and there identifying, marking, and later impounding

such parts of the said exhaust pipes and connections as they may desire, all at the expense of said claimants as hereinafter provided; it is thereupon

Ordered, Adjudged and Decreed that the sale of the American yacht "Friendship II" made on October 8, 1936, by John Woolslair, as Trustee appointed by this Court, be, and the same is hereby in all respects, confirmed, reserving the right to said claimants as aforesaid to inspect and impound said exhaust pipes, connections and parts thereof as herein provided.

22 It is Further Ordered that the inspection above mentioned shall be made on October 13, 1936, and that such parts be then identified and marked, and that thereafter such exhaust pipes, or connections, or parts thereof as shall have been identified or marked may be withdrawn from said yacht by counsel for said claimants and impounded in this Court, in which event replacements thereof shall be made, all by and at the costs of said claimants without expense or loss to the said purchaser, S. M. Becker, or his assigns, withdrawal and replacement to be made on or before the expiration of three days after the date that the said purchaser, S. M. Becker, shall notify Evans, Mershon & Sawyer, Miami, Florida, counsel for the said claimants, of the presence of said yacht in Miami, Florida, or its immediate vicinity, it being understood that said yacht shall be brought to Miami or vicinity by said purchaser as aforesaid within thirty days (weather permitting), and that said pipes and connections or parts thereof identified and marked by claimants as aforesaid shall not be changed, destroyed, or removed by said purchaser until after the lapse of said three days after said notice to said claimants of arrival in Miami or vicinity as aforesaid, except that if any change occur without the purchaser's affirmative act

such part or parts shall be preserved with identity thereof to comply with the otherwise stated terms of this order.

Done and Ordered at Miami, Florida, this 15th day of October, 1936.

JOHN W. HOLLAND,
United States District Judge.

On October 28, 1936, there was entered and filed an ORDER APPROVING THE TRUSTEE'S REPORT OF THE SALE OF THE SAID YACHT AND ORDERING CERTAIN DISBURSEMENTS, which order is in words and figures, following, to wit:

23

ORDER.

In Admiralty, No. 147-M.

(Title Omitted.)

This cause came on to be heard upon the report of John Woolslair, Fort Myers, Florida, as Trustee, appointed herein by order of the Court, dated September 1, 1936, and it appearing that the Proctors for the Claimants had due notice of the said report, after argument of the Proctors, the Court being fully advised in the premises.

It Is Considered, Ordered and Adjudged that the said report be, and the same is, hereby approved; and that the sale of the said yacht "Friendship II", her engines, tackle, apparel and furniture, and a Chris-Craft Motor Launch, by the said Trustee to Sherburn M. Becker be, and the same is, hereby confirmed, and that the said Trustee is

hereby authorized, empowered and directed to pay out of the proceeds of the said sale, namely, Seventy-one Hundred Dollars (\$7100.00), the following items of expense properly incurred by him as such Trustee, namely:

News-Press Publishing Company, Fort Myers, Florida, for publication of notice of sale for three times in the Fort Myers-News Press	\$ 2.25
Fort Myers Insurance Agency, Inc., Fort Myers, Florida, full marine insurance in the sum of \$10,000, the premium covering the period from September 4, 1936 to October 8, 1936, inclusive	126.50
Heitman-Evans Company, Fort Myers, Florida, for paint to preserve the decks of the yacht Friendship II	32.60
Franklin Hardware Co., Inc., Fort Myers, Florida, 2 chamois skins to keep parts of the said yacht polished	4.25
Gulf Oil Corporation, Fort Myers, Florida, to gasoline to operate the motor so as to keep the batteries charged on the said yacht, etc.	23.53
Captain Fred E. Roberts, salary due as Captain of Yacht Friendship II at \$175.00 per month from September 2, 1936 to October 8, 1936, both inclusive	215.81
Chief Engineer C. M. Blount, salary due as Chief Engineer of Yacht Friendship II at \$140.00 per month from September 2, 1936 to October 8, 1936, both inclusive	172.69
Pat. Morgan, Fort Myers, Florida, for services aboard Yacht Friendship II on the day of sale .	5.00
United States Collector of Customs at New York City for recording bill of sale of Yacht Friendship II and Chris-Craft Motor Launch, from Alma Chambers, as domiciliary and as ancillary executrix to John Woolslair, as Trustee	2.20

United States Collector of Customs at Cincinnati, Ohio, to cost of certificate of abstract of title to enable John Woolslair, as Trustee, to trans- fer the Yacht Friendship II, her engines, etc. and the Chris-Craft Motor Launch to Sher- burn M. Becker	1.06
To Deputy Clerk of the United States District Court at Tampa, Florida, for a certified copy of the Order authorizing John Woolslair, as Trustee, to sell the said yacht Friendship II, her engines, etc., and the said Chris-Craft Motor Launch, which was necessary to procure to accompany the bill of sale by the Trustee to Sherburn M. Becker	1.40
Total	\$587.29

And the said Trustee having filed before this Court an itemized statement of the services performed by him, as such Trustee, verified by his oath, the compensation of the said John Woolslair, as such Trustee, be, and the same is, hereby fixed at \$377.50, which shall include all expenses incurred by him, as such Trustee, other than the specific items hereinbefore specifically authorized to be paid out of the proceeds of the said sale; and the said Trustee is hereby authorized, empowered and directed to deduct out of the proceeds of the said

25 sale the amount of compensation hereinbefore fixed; and that the said Trustee do pay to Edwin R. Williams, as Clerk of this Court, the net balance of the said Seventy-one Hundred Dollars (\$7100.00) remaining in the hands of the said Trustee after making all of the disbursements hereinbefore expressly authorized, and upon receiving the receipt of the said Edwin R. Williams, as such Clerk, for the correct net balance of the funds in the hands of the said Trustee, the said Trustee shall thereupon be relieved of all responsibility for

the moneys delivered by him to the said Edwin R. Williams, as such Clerk; and that said Trustee do forthwith, after having complied with all of the terms of this decree, file in the office of the Clerk of this Court a final report, showing compliance by him with all of the terms of this decree; whereupon the said Trustee shall be considered to have performed all of his duties as such Trustee and be discharged from further responsibility.

Done and Ordered at Miami, Florida, this October 28th, A. D. 1936.

JOHN W. HOLLAND,
District Judge.

On October 23, 1936, Charlotte Cross Just filed her ANSWER TO THE LIBEL, in words and figures, following, to wit:

26 ANSWER OF CHARLOTTE CROSS JUST.

In Admiralty No. 147-M.

(Title Omitted.)

The answer of Charlotte Cross Just, claimant and respondent herein, to the libel and petition of Alma Chambers, as executrix and as ancillary executrix of the last will and testament of Henry C. Yeiser, Jr., late owner of the American Yacht, "Friendship II," in an alleged cause of limitation of liability, civil and maritime, alleges as follows:

First: Respondent is without knowledge or information as to the allegations in the first numbered article of the

said libel and petition as to the qualifications of libelant as executrix and ancillary executrix under the last will of Henry C. Yeiser, Jr., or as to her having possession of said yacht. Respondent admits that Henry C. Yeiser, Jr., died on or about March 5, 1936, and that he owned the said yacht at the time mentioned in the petition and this answer.

Second: Respondent is without knowledge or information as to the allegations in the second numbered article of the said libel and petition as to the size, equipment, value, and use of the said yacht.

Third: Respondent admits that on February 28, 1936, said yacht, with its owner, Henry C. Yeiser, Jr., respondent, and others, left the port of Miami, Florida, for a pleasure cruise in Florida waters, and returned to the said port on March 2, 1936. Respondent denies that she imbibed in intoxicating liquors, but admits that during the said cruise she became ill and at that time, and all times since, has claimed that she was made ill through the escape of carbon monoxide or other noxious gas escaping from the motors, exhaust pipes, and connections thereto

in the said yacht; and that as the result thereof,
 27 she has made claims against the said Henry C. Yeiser, Jr., and his estate, for compensation for the said injuries and damages suffered by her as herein averred.

Fourth: Respondent avers that carbon monoxide or other noxious gases did escape from the piping motors and connections thereto in the said yacht, as hereinafter set forth, and that the same was due to the carelessness and negligence of the owner, officers, and members of the crew of the said yacht; respondent denies that the damages and injuries suffered by her were occasioned and incurred without the privity or knowledge of the said

Henry C. Yeiser, Jr., and avers that the said injuries caused her thereby, were occasioned and incurred with the privity and knowledge of the said owner of said yacht; and respondent expressly denies that the injury and damage to claimant was due to an unforeseen and unavoidable accident, but to the contrary, says that the said injuries could have been foreseen and avoided by the exercise of reasonable care on the part of Henry C. Yeiser, Jr., and that said injuries were due to the negligence and carelessness herein set forth.

Fifth: Respondent admits the allegations of the article numbered five in the said libel and petition, in that she has petitioned the Probate Court of Hamilton County, Ohio, for permission to file a claim against the Estate of Henry C. Yeiser, Jr.

Sixth: Respondent is without knowledge as to the allegations contained in the article numbered six of the said petition as to freight pending by reason of the said trip.

Seventh: Respondent avers that the petitioner is not entitled to the benefit of the limitation of liability provided for in Sections 4281, 4282, 4283, 4284, 4285 and 4286 of the Revised Statutes of the United States, being Sections 183, 184 and 185 of Title 46 United States Code Annotated, and the various Acts amendatory thereof and supplemental thereto, or otherwise. And answering further, respondent avers that the petitioner is not entitled to exemption from liability for the damages and injuries done, occasioned, or incurred by respondent, by reason of the escape of carbon monoxide or other noxious gas as hereinafter set forth.

Eighth: Respondent is without knowledge as to the existence of any liens on the said yacht prior or paramount to the lien of the respondent that has accrued by

reason of the damages and injuries aforesaid. Answering further, respondent is without knowledge as to the condition of the yacht, her present market value, and whether or not the said yacht has deteriorated in value since the said trip, as averred in Article "Eight" of said petition.

Ninth: Respondent admits that the said yacht, at the time of the filing of the petition and libel was in the port of Fort Myers, in the Southern District of Florida.

Tenth: Further answering the libel and petition herein, respondent avers that on the 1st day of March, 1936, at the invitation of Henry C. Yeiser, Jr., now deceased, she was a guest for a cruise from Miami, Florida, and return, aboard the yacht, "Friendship II," and that the said yacht was on coastal waters somewhere near the vicinity of Miami, Florida; that on the said night of March 1, 1936, or the early morning of March 2, 1936, while she was asleep in the stateroom which had been assigned to her for the said cruise, by the said Henry C. Yeiser, Jr., on the said yacht, which stateroom was on the bottom deck of said yacht, at the stern thereof, and directly above the exhaust pipes supposed to discharge the gases from the motors of the said yacht, this respondent was overcome and rendered unconscious by carbon monoxide, or some other noxious gas, which had been permitted to escape from the motors and exhaust pipes of the said yacht and into the stateroom assigned to her as aforesaid, and

29. where she was sleeping, as aforesaid; that as the direct result thereof, her entire system was poisoned and she has sustained severe and permanent injuries to her physical and nervous system and health; that at the said time the said yacht was unseaworthy, and the exhaust pipes in the said yacht had holes in them, and were otherwise in such a defective condition as to permit carbon monoxide or other noxious gas to

escape therefrom and into the stateroom which had been assigned to her as aforesaid, and in which she was sleeping as aforesaid.

That as the direct result thereof, since the date of the said injuries, she has been and still is, under the constant care and attention of physicians and nurses, and will be compelled to remain under their care in the future for an undetermined period; that she has been forced to incur and for an undetermined period of time in the future will incur great expense for hospital, medical, surgical, and nursing attention; and for medicines in and about attempting to cure herself of the said injuries; that the said injuries are permanent and are the direct and proximate results of the said negligence of the said Henry C. Yeiser, Jr., in assigning to her the said stateroom aboard his said yacht when he knew, or should have known, that the said yacht was unseaworthy, and that said stateroom was unsafe, and that said motors and exhaust pipes were defective and in such condition that carbon monoxide gas or other noxious gas was escaping or would likely escape therefrom, as aforesaid, into the stateroom, which he had assigned to her and in which she was sleeping as aforesaid, and in permitting said gas to escape into said stateroom as aforesaid.

Wherefore, respondent prays that the Court will enter its decree herein declaring the petitioner to be liable on account of respondent's injuries and damages suffered as aforesaid; and denying the right of the petitioner herein to a limitation of the said liability; and that complete relief be granted to respondent by the entry of a judgment against the petitioner for the full amount of respondent's said damages and costs; that the Court determine respondent's proper share of the fund now in Court and

30 distribute the same to her to be applied on the said judgment, and enter a personal judgment herein against the petitioner for any and all deficiencies thereafter existing, and that respondent may have such other and further relief in the premises, as in law and justice she may be entitled to receive.

EVANS, MERSHON &
SAWYER,

M. L. MERSHON,
W. O. MEHRTENS,

Proctors for Charlotte Cross
Just.

31 State of Florida,
County of Dade.

Before me this day personally appeared, W. O. Mehrtens, who being first duly sworn, says that he is an associate of the firm of Evans, Mershon & Sawyer, Proctors in Admiralty, Miami, Florida, and of counsel for the above described claimant; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are communications received from the claimant and her agents, and an examination of the vessel and the papers relating to the matter in suit; that the reason why this verification is not made by the claimant, is that the said claimant is not a resident of the State of Florida, and is not within this district.

W. O. MEHRTENS.

Sworn to and subscribed before me, this 23rd day of October, 1936.

WM. E. DUNWODY, JR.,

(N. P. Seal)

Notary Public, State of Florida
at Large.

My Commission Expires 9/29/39.

On October 23, 1936, Anne Elise Gruner filed her Answer to the Libel, in words and figures following, to-wit:

32 ANSWER OF ANNE ELISE GRUNER.

In Admiralty No. 147-M.

(Title Omitted.)

The answer of Anne Elise Gruner, claimant and respondent herein, to the libel and petition of Alma Chambers, as executrix and as ancillary executrix of the last will and testament of Henry C. Yeiser, Jr., late owner of the American Yacht, "Friendship II," in an alleged cause of limitation of liability, civil and maritime, alleges as follows:

First: Respondent is without knowledge or information as to the allegations in the first numbered article of the said libel and petition as to the qualifications of libelant as executrix and ancillary executrix under the last will of Henry C. Yeiser, Jr., or as to her having possession of said yacht. Respondent admits that Henry C. Yeiser, Jr., died on or about March 5, 1936, and that he owned the said yacht at the time mentioned in the petition and this answer.

Second: Respondent is without knowledge or information as to the allegations in the second numbered article of the said libel and petition as to the size, equipment, value, and use of the said yacht.

Third: Respondent admits that on February 28, 1936, said yacht, with its owner, Henry C. Yeiser, Jr., respondent, and others, left the port of Miami, Florida, for a pleasure cruise in Florida waters, and returned to the said port on March 2, 1936. Respondent denies that she im-

bibed in intoxicating liquors, but admits that during the said cruise she became ill and at that time, and all times since, has claimed that she was made ill through the escape of carbon monoxide or other noxious gas escaping from the motors, exhaust pipes, and connections thereto in

the said yacht; and that as the result thereof,
33 she has made claims against the said Henry C. Yeiser, Jr., and his estate, for compensation for the said injuries and damages suffered by her as herein averred.

Fourth: Respondent avers that carbon monoxide or other noxious gases did escape from the piping motors and connections thereto in the said yacht, as hereinafter set forth, and that the same was due to the carelessness and negligence of the owner, officers, and members of the crew of the said yacht; respondent denies that the damages and injuries suffered by her were occasioned and incurred without the privity or knowledge of the said Henry C. Yeiser, Jr., and avers that the said injuries caused her thereby, were occasioned and incurred with the privity and knowledge of the said owner of said yacht; and respondent expressly denies that the injury and damage to claimant was due to an unforeseen and unavoidable accident, but to the contrary, says that said injuries could have been foreseen and avoided by the exercise of reasonable care on the part of Henry C. Yeiser, Jr., and that said injuries were due to the negligence and carelessness herein set forth.

Fifth: Respondent admits the allegations of the article numbered five in the said libel and petition, in that she has petitioned the Probate Court of Hamilton County, Ohio, for permission to file a claim against the Estate of Henry C. Yeiser, Jr.

Sixth: Respondent is without knowledge as to the allegations contained in the article numbered six of the said petition as to freight pending by reason of the said trip.

Seventh: Respondent avers that the petitioner is not entitled to the benefit of the limitation of liability provided for in Sections 4281, 4282, 4283, 4284, 4285 and 4286 of the Revised Statutes of the United States, being Sections 183, 184 and 185 of Title 46 United States Code Annotated, and the various Acts amendatory thereof and supplemental thereto, or otherwise. And answering further, respondent avers that the petitioner is not entitled to exemption from liability for the damages and injuries done, occasioned, or incurred by respondent, by
 34 reason of the escape of carbon monoxide or other noxious gas as hereinafter set forth.

Eighth: Respondent is without knowledge as to the existence of any liens on the said yacht prior or paramount to the lien of the respondent that has accrued by reason of the damages and injuries aforesaid. Answering further, respondent is without knowledge as to the condition of the yacht, her present market value, and whether or not the said yacht has deteriorated in value since the said trip, as averred in Article "Eighth" of said petition.

Ninth: Respondent admits that the said yacht, at the time of the filing of the petition and libel was in the port of Fort Myers, in the Southern District of Florida.

Tenth: Further answering the libel and petition herein, respondent avers that on the 1st day of March, 1936, at the invitation of Henry C. Yeiser, Jr., now deceased, she was a guest for a cruise from Miami, Florida, and return, aboard the yacht "Friendship II," and that the said yacht was on coastal waters somewhere near the vicinity of Miami, Florida; that on the said night of March 1, 1936,

or the early morning of March 2, 1936, while she was asleep in the stateroom which had been assigned to her for the said cruise, by the said Henry C. Yeiser, Jr., on the said yacht, which stateroom was on the bottom deck of said yacht, at the stern thereof, and directly above the exhaust pipes supposed to discharge the gases from the motors of the said yacht, this respondent was overcome and rendered unconscious by carbon monoxide, or some other noxious gas, which had been permitted to escape from the motors and exhaust pipes of the said yacht and into the stateroom assigned to her as aforesaid, and where she was sleeping, as aforesaid; that as the direct result thereof, her entire system was poisoned and she has sustained severe and permanent injuries to her physical and nervous system and health that at the said time the said yacht was unseaworthy, and the exhaust pipes in the said yacht had holes in them, and were otherwise in such a defective condition as to permit carbon monoxide or other noxious gas to escape therefrom and into the stateroom which had been assigned to her as aforesaid, and in which she was sleeping as aforesaid.

35 That as the direct result thereof, since the date of the said injuries, she has been and still is, under care and attention of physicians and will be compelled to remain under their care in the future for an undetermined period; that she has been forced to incur and for an undetermined period of time in the future will incur great expense for hospital, medical, surgical, and nursing attention; and for medicines in and about attempting to cure herself of the said injuries; that the said injuries are permanent and are the direct and proximate results of the said negligence of the said Henry C. Yeiser, Jr., in assigning to her the said stateroom aboard his said yacht when he knew, or should have known, that the said yacht was unseaworthy, and that said stateroom was unsafe, and that said motors and exhaust pipes

were defective and in such condition that carbon monoxide gas or other noxious gas was escaping or would likely escape therefrom, as aforesaid, into the stateroom, which he had assigned to her and in which she was sleeping as aforesaid, and in permitting said gas to escape into said stateroom as aforesaid.

Wherefore, respondent prays that the Court will enter its decree herein declaring the petitioner to be liable on account of respondent's injuries and damages suffered as aforesaid; and denying the right of the petitioner herein to a limitation of the said liability; and that complete relief be granted to respondent by the entry of a judgment against the petitioner for the full amount of respondent's said damages and costs; that the Court determine respondent's proper share of the fund now in Court and distribute the same to her to be applied on the said judgment, and enter a personal judgment herein against the petitioner for any and all deficiencies thereafter existing, and that respondent may have such other and further relief in the premises, as in law and justice she may be entitled to receive.

EVANS, MERSHON &
SAWYER,

M. L. MERSHON,
W. O. MEHRTENS,

Proctors for Anne Elise
Gruner.

36 State of Florida,
 County of Dade.

Before me this day personally appeared W. O. Mehrtens, who, being first duly sworn, says that he is an associate of the firm of Evans, Merhshon & Sawyer, Proctors in Admiralty, Miami, Florida, and of counsel for Anne Elise Gruner, the above described claimant; that he has read the foregoing answer and knows the

contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are communications received from the claimant and her agents, and an examination of the vessel and the papers relating to the matter in suit; that the reason why this verification is not made by the claimant, is that the said claimant is not a resident of the State of Florida, and is not within this district.

W. O. MEHRTENS.

Sworn to and subscribed before me, this 23rd day of October, 1936.

(N. P. Seal)

WM. E. DUNWODY, JR.,
Notary Public, State of Florida
at Large.

My commission expires: 9/29/39.

11:1st 1/6
10-23-36.

37 On November 2, 1936, the United States Marshal filed PROOF OF PUBLICATION OF NOTICE TO CHARLOTTE JUST AND ANNE GRUNER to present their claims before the Commissioner.

On December 11, 1936, RECEIPT OF THE CLERK OF THE COURT FOR THE PROCEEDS OF THE SALE OF THE SAID YACHT FROM THE TRUSTEE, was filed.

On December 11, 1936, the Trustee filed his FINAL REPORT OF DISBURSEMENTS from the proceeds of the Sale of the said Yacht.

On January 9, 1937, the Libelant filed a NOTICE OF APPLICATION FOR AN ORDER REQUIRING THE CLAIMANTS, CHARLOTTE JUST AND ANNE GRUNER, TO ANSWER CERTAIN INTERROGATORIES, the said Interrogatories being attached to the said Notice.

On January 9, 1937, the Libelant filed a Notice of HEARING OF HER MOTION FOR LEAVE TO INSPECT AND MAKE PHOTOGRAPHS OF THE EXHAUST PIPE OF THE SAID YACHT, the said Motion being attached to the said Notice.

On January 9, 1937, the Claimant, Charlotte Cross Just, filed EXCEPTIONS TO THE INTERROGATORIES propounded to her by the Libelant.

On January 9, 1937, the Claimant, Anne Elise Gruner, filed EXCEPTIONS TO THE INTERROGATORIES propounded to her by the Libelant.

On February 24, 1937, there was entered and filed an ORDER SUSTAINING THE EXCEPTIONS OF JUST AND GRUNER TO THE INTERROGATORIES propounded to them by the Libelant and also
38 granting the Libelant's Motion for leave to inspect and make photographs of the exhaust pipe of the said Yacht.

On October 2, 1937, the Claimants, Just and Gruner, filed a MOTION TO SUPPRESS THE DEPOSITION OF DR. YANDELL HENDERSON.

On October 8, 1937, a STIPULATION was filed agreeing to the opening of the deposition of Dr. Yandell Henderson.

On the 2nd day of May, 1938, TRANSCRIPT OF THE TESTIMONY was filed in words and figures following, to-wit:

In the United States District Court for Southern District of Florida, Miami Div.

39

No. 147-M-Adm.

In the Matter of: The American Yacht Friendship II.

Transcript of proceedings had and testimony taken in the above-entitled cause before the Hon. John W. Holland, District Judge, at Miami, Florida, October 5-15, 1937.

Appearances:

Kirlin, Campbell, Hickox, Heating & McGrann (By Raymond Parmer, Esq.), and

Loftin, Stokes & Caulkins (By Messrs. Stokes and Coleman),

In Behalf of the Petitioner.

Evans, Mershon & Sawyer (By Messrs. Mershon, Mayne and Mehrtens),

In Behalf of the Claimants.

Reported by Henry E. Colman.

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The Court:

Now, gentlemen, I have read the letters which were written yesterday following the discussion of this

case in chambers. I find that on February 20th of this year I addressed a joint letter to counsel which particularly referred to the matter of interrogatories, but in that letter I made this comment: "The case of Hartford Accident Company vs. Southern Pacific Company, 273 U. S. 215, sets out how the issues should be tried."

The cases cited by counsel for the claimants are, first, the *Pere Marquette*, 203 Federal, which was decided in 1913. Of course the next case, *In re Davidson S. S. Company*, 133 Fed., was before that date. The case of *S. S. Hewitt*, 284 Federal, was decided in 1922. The *Erie Lighter* case, 250 Federal, was of course before that date. The case of *Black Eagle*, 8 Federal Supplement, was decided subsequent to the date of the decision of the Supreme Court of the United States in *Hartford Accident Co. vs. Southern Pacific*, which was decided in 1926. However, this District Court decision in 8th Federal Supplement deals with the matter of interrogatories and not primarily with the matter of interrogatories; and what was said in that case of *Black Eagle* appearing to be referring to the particular matter of procedure was a quotation from the *Hewitt* case decided in 1922. The case of *Diamond Coal Company*, 297 Federal, was decided about 1922; at least certiorari was denied in 1923, hence it is that so far as dates are concerned, this Hartford case seems to be the one that the Court
41 should follow, and I think it certainly sets out very clearly what should be the course of procedure. Therefore, it would seem to me that, just as it is indicated in that case, the question first to be decided is whether there was liability at all and, second, whether the owner may void that liability.

As I understand the issues here, if liability is determined to exist on that first issue, it includes a finding that the Master was at fault, and leaves upon the question of whether there was any privity of knowledge on the shipowner.

Now, do counsel prefer that I make some announcement at this time as to my observations as to the burden of proof, or would you rather proceed with the announcement already made and let the matter of burden of proof be decided as the cases goes on?

Mr. Parmer:

For my part I think I would agree that we have the burden of showing absence of privity, that is, absence of personal responsibility on the owner, whereas the other side has the burden of proving negligence, that is, original liability. That splits the burdens and I think Your Honor has covered very well the question of who go forward, that is, that the matter of liability must be dealt with first, and since they have the burden on that they would go forward on that issue. That is my understanding of it and I would agree to that.

Mr. Mershon:

I think, if Your Honor please, that counsel has made a fair statement of the respective burdens. I am not now discussing what constitutes meeting the burden of proof of liability. There may be such a thing as a presumption itself from the facts meeting the burden. I agree that the burden is on the one asserting liability, which would be the claimants, and if that issue is decided in favor of the petitioner, that ends the case. If, on the other hand, that issue is decided in favor of the claimants, automatically there is a finding then that the Master or those under him and the owner were responsible or were negligent.

Will Your Honor give us about two minutes to confer with counsel? I want to see if we can save some time.

The Court:

All right; you will let me know when you are ready.

(Recess.)

Mr. Mershon:

We would like at this time to have confirmed the understanding which we gathered from Your Honor's statement this morning, that we will proceed and the Court will determine the issue of liability and the issue of the right to limit before we go into the question of damages.

As we understand the procedure, after determination of the issue of liability and right to limit, if liability be found and the right to limit be denied, or even if the right to limit be granted, the Court then proceeds to determine the question of damages, and in some instances those damages may not equal or exceed the value of the

vessel. In any event, it will be necessary to go into the question of damages, and we ask the

Court to go now into the issues of liability and the right to limit, and to defer the hearing on the question of damages until after these two questions have been decided. I say that for several reasons. The first and foremost being the fact that our clients, Mrs. Just and Miss Grunow, who live in St. Louis, are unable to be present at the trial of this issue, of the first two issues, but we expect and hope to have them available for the trial of the question of damages. We have here to present to the Court, if he is interested in seeing them, letters of their physicians, stating that their condition is such that they cannot safely go through at this time the ordeal of a trial. Coupled with that is the fact that on the question of damages and extent of injury there is a mass of medical testimony to be considered by the Court, to be submitted to the Court and considered by the Court; five or six hundred pages of which is in a transcript of testimony taken on deposition of physicians in and around St. Louis, Missouri, which transcript is in the process of being written up and is not now available, and under the rule of Court which permits the Court itself to arrange the procedure as the circumstances may warrant and the ends of justice may re-

quire, we ask Your Honor to limit the present hearing on the issues of liability and the right to limit.

Mr. Parmer:

Your Honor, in reply to that I would say that it would be most inconvenient and indeed most unusual to conduct a trial of this kind in that fashion. It is true that there are a number of issues, and it is the usual thing to put in all of the proof on the one trial with regard to all of the issues, and then, on the other hand, as Your Honor has observed in the Hartford case, the Supreme Court does lay down the order in which it decides those issues, and it is indeed most unusual to have two separate trials on the issues. For the convenience of the parties, and I might say of the counsel who live at any great distance, that it would be somewhat of a holiday to have to return to Florida. I think it would be as much a burden to Mr. Mayne to have to return from St. Louis, although I am not speaking primarily for him, but I am speaking for myself. I do not see why all of the evidence, with the exception of that which is contained in depositions, which may be here before this trial is over, cannot be presented now, and if I may say a word with regard to what may really be the fine Italian strategy is trying a case, I can say that it is most unusual for claimants in a personal injury case to be absent at the main issue, at the trial of the main issue of liability. I know I shall be inconvenienced if I do not get an opportunity to cross examine the claimants on this question of liability.

(Extended discussion between counsel and the Court off the record.)

The Court:

I shall first make this clear: In the determination of the two issues, liability or not, and, secondly, limitation

of liability, the evidence will be considered on these two issues; in other words, the evidence will be heard on these two issues at the same time, before any announcement of the Court is made on either one or the other. This Court is very much of the opinion that it is wise to determine the question of liability in admiralty matters and save the matter of damages for a subsequent consideration. I have been on the bench only about 15 months, but I have followed that practice and in some cases with satisfaction. It is more or less a rule of this District. Dr. Strum of this District decided a case of more or less magnitude where that practice was followed. That case was recently reported in one of the Supplements, and you will find that, if you are interested, under the style of Jacksonville Forwarding Company. I was very much interested in that case because of my connection with it as District Attorney. In that case the issue of liability was determined and then the question of damages was considered; so I shall follow that rule in this case.

Now, with reference to the contention made by the petitioner that prejudice will arise out of inability to examine the two claimants on the question of liability, or what those two parties know about the whole affair, the Court will reserve that matter. If in the progress of this case the Court is of the opinion that these two claimants should be examined, the Court will direct that their examination take place before there is a decision made on this question of liability, and that will be ascertained as the case progresses.

Mr. Farmer:
Very well.

46 The Court:
You may proceed.

Mr. Mershon:

If Your Honor please, we have outside the copper tubing or exhaust pipes which are the principal exhibits in this case. They were impounded by order of this Court and they have been in Withers Warehouse until this time, and with the Court's permission I should like to have them brought in and placed on the floor of the Court Room, and then take such steps as may be proper to identify them and go ahead with this case.

The Court:

Is it a representative of the Withers Storage house that brings these into Court?

Mr. Mershon:

Yes.

Mr. Parmer:

I think we can probably agree with you on that.

Stipulation.

• Mr. Mershon:

It is stipulated between the parties by their respective counsel in open Court that the six pieces of copper exhaust pipes and coverings thereon and attachments thereto are brought into Court by John E. Withers Transfer & Storage Company, in whose possession said pipes have been since they were impounded as exhibits in this case under order of this Court, and that the said articles are in substantially the same condition now as when they were delivered by Donovan's Boatyard to John E. Withers Transfer and Storage Company.

Mr. Parmer:

We may differ with regard to the meaning of "substantially the same". I will say they are the same pipes

and that they have the same wrappings around them, that they are the same length and relatively the same degree of—

47 Mr. Mershon:

We want you to agree that they are the same holes in there now. That exactly the same holes are in there now as they were at the time of delivery to Withers Transfer and Storage Company.

Mr. Parmer:

All right, we agree with you on that.

Mr. Mershon:

We would like to call Devoant's employee to identify these pipes.

Mr. Parmer:

I think we can stipulate with you on that, if you wish.

Mr. Mershon:

I will need this witness to arrange the pipes.

Thereupon, HARRY P. BRACKEN was called as a witness in behalf of the Claimants, and having been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Mershon:

Q. What is your name, sir?

A. Harry P. Bracken.

Q. Where do you live?

A. 151 N. W. 41st Street.

Q. By whom are you employed and in what capacity?

A. At the Coconut Boatyard—Coconut Grove Boatyard—machinist.

Q. Is that generally known as Donovan's Boatyard?

A. Yes. But is usually called Coconut Grove Boat Works.

Q. I show you these six pieces of pipe which are marked for identification Claimants' Exhibits 1 to 6, respectively. Have you seen these pipes before?

A. Yes.

Q. Where did you first see them?

A. I took most of them out of the boat, disconnected the bolts and took them out and brought them into the shop.

Q. You took these pipes out of the yacht Friendship II when she was on the ways at Coconut Grove Boat Works?

A. Yes, sir.

Q. Are the pipes, with the possible exception of the wrappings, in the same condition as they were when you first saw them in the boat and took them out?

A. I will say they are practically the same, very little change.

Q. As far as the pipes are concerned and the patches on them, do they appear to be the same?

A. The same.

Q. Did you remove the patches?

A. I didn't; we were not interested in the old ones; we were putting in new pipes.

Q. Was the Friendship II there for the purpose of taking out these exhaust pipes and installing new ones?

A. That was one of our jobs.

Q. What dimension pipe is this?

A. It is measured from the outside.

Q. Will you look at it, please, sir, and tell us?

A. If I had a rule.

Q. Here is a pencil; that might—

A. It is 2½.

Q. Do you recall what size pipes were replaced in the boat to take the place of these?

A. No, sir, I don't remember whether we changed the size or not, but I think we did.

Mr. Parmer:

Just a minute. I move to strike out "I think".

Mr. Mershon:

We will strike the answer and the question. If he doesn't know, we will show that by someone else.

Q. I believe you say this was about 2½ inches?

A. Yes, sir.

Q. That can be measured?

A. Yes, sir.

Q. How can you show us which side of the boat the pipes, Exhibits 2, 3, 4, 5 and 6, being these five up here—

A. I couldn't remember except from the markings, but I remember that these came off the front end of the section; I remember that all right.

Q. I will mark this one Exhibit 2, this one Exhibit 1, this one Exhibit 3, this one Exhibit 4, this one Exhibit 5 and this one Exhibit 6. Mr. Bracken, did you put these tags on there and mark them for the purpose of identifying them?

A. Mr. Dowling I believe put these tags on them. When I took them out I marked some of them with a red pencil.

Q. Look at this length of pipe marked Exhibit 50 3 and note the red letter on there. Who put that on there?

A. I did.

Q. Can you from that identify what part of the boat this pipe came from?

A. From the port side.

Q. Then that is the port exhaust pipe?

A. Yes, sir.

Q. Look at the piece of pipe marked Exhibit 6 and see if there are any markings on there by which you can identify that.

A. I remember this clamped piece of hose on there and the wrappings.

Q. Is that a part of the port exhaust pipe?

A. I think it is.

Mr. Parmer:

I move to strike out "I think it is".

The Court:

The motion is granted.

A. It looks like the one we took out. Without looking at the markings I couldn't say whether it was the port or starboard. I would have to depend on the markings.

Q. Examine the tags and markings and see if there is anything that you placed on there or had placed there by which you can recall which side.

A. Yes.

Q. Can you now state positively that this length of pipe, Ex. 6, is a part of the port exhaust pipe?

A. Yes, sir.

Q. Did you take that out of the Friendship II?

51 A. Yes, sir.

Q. All right, look at Exhibit 4 and see if you can tell what part of the boat that came out of?

A. This part, you see, is the front end of the port section, on the port side.

Q. That is part of the port exhaust pipe?

A. Yes, sir.

Q. All right, refer to this piece of pipe, Exhibit 5, and see if you can identify which exhaust pipe that is; is that a part of the same port exhaust pipe?

A. Yes, sir.

Q. Please state whether these five pieces of pipe, Exhibits 2, 3, 4, 5 and 6 constitute the entire port exhaust pipe, or if there is anything missing; if so, state what it is?

A. Just one piece missing.

Q. What piece of pipe is that?

A. Similar to that one (pointing); the piece that goes next to the engine.

Q. The piece missing would be a piece similar to Exhibit 1, is that right?

A. Yes.

Q. Now I will show you this piece of pipe, Exhibit 1, and ask you what that is?

A. That is the front section; that connects to the engine.

Q. Is that a part of the port or starboard exhaust pipe?

A. That must be the starboard, I think.

52 Q. Check that and see.

A. I know now that it is the starboard.

Q. And with the exception of a piece of exhaust pipe similar to Exhibit 1, which goes next to the engine, these five pieces, Exhibits 2 to 6, inclusive, complete the port exhaust pipe as you found it in the Friendship II?

A. I believe they complete it; at least that was all of the port section; I don't believe there is anything left.

Q. Can you arrange this port exhaust pipe and these pipes in the order in which they run back from the engine to the stem of the boat?

A. I believe I could.

Q. Do that sir.

A. There was a piece like this that came from the engine.

Q. A piece like this (Exhibit 1)?

A. Yes, sir.

Q. Which joins this (Exhibit 2)?

A. Yes, sir.

Q. All right, let's arrange these in order.

A. All right. This is the back of the exhaust.

The Court:

Referring to Exhibit 1.

Q. Then I ask you if the port exhaust pipe as you found it in the Friendship II and took it out, was arranged in the following order, namely, a piece similar to Exhibit 1 was connected to the engine, to which was immediately fastened the piece, Exhibit 5, of which Exhibit 2 is a segment, that is, has a piece or segment cut off to which Exhibit 2 was fastened to a piece of pipe, Exhibit 6, to which in turn was fastened a piece of pipe, Exhibit 1—

The Court:

Mr. Mershon, isn't there another piece?

Q. (Continuing.) Wait a minute. To which was fastened the piece, Exhibit 4, and to which was connected the piece of pipe, Exhibit 3?

A. Yes, sir.

The Court:

Does Your Honor get that clearly?

The Court:

Yes.

Mr. Mershon:

That is all. Do you want to ask him any questions, Mr. Farmer?

Cross Examination.

By Mr. Parmer:

Q. I would like to know on what date you took these pipes from the Friendship II?

A. I couldn't tell you that.

Q. Do you know the month?

A. No. It was the early part of last season; that is about all I can tell you; I don't remember dates at all.

Mr. Parmer:

Can you supply us with the dates, Mr. Mershon?

Mr. Mershon:

Yes. It may be stipulated in the record that the pipes were taken out of the houseboat Friendship II on October 22, 1936.

54 The Court:

Mr. Witness, have you personal knowledge of the disconnecting of the different exhibits, and also the sawing asunder of the several pieces as they appear here?

The Witness:

Yes, sir.

The Court:

Give us that personal knowledge.

The Witness:

My knowledge is that in sawing these off I always made use of this line so I could tell just where to saw.

The Court:

Have you personal knowledge of the sawing asunder of that middle pipe there (pointing)?

The Witness:
Yes, sir.

The Court:
Tell us about that. Why was it sawn asunder at that particular point?

The Witness:
All of this stuff goes under the floor and you had to cut them up to get them out.

The Court:
So that particular point for sawing asunder was selected then because of the structure of the boat?

The Witness:
Yes, sir.

The Court:
Is the same true with regard to the other sawing that was done?

The Witness:
Yes, sir. You will notice right here on these.

The Court:
What are you referring to now?

The Witness:
Exhibits 2 and 5. The floor was in such shape that I had to reach out and saw it with one hand.

JOHN G. McKAY, a witness produced in behalf of the Claimants, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Mershon:

Q. Please state your full name?

A. John G. McKay.

Q. What is your profession?

A. Lawyer.

Q. Where do you live or reside?

A. 6661 Collins Avenue, Miami Beach, Florida.

Q. Where is your office?

A. First National Bank Building, Miami.

Q. Are you a member of the firm of McKay, Dixon & DeJarnette?

A. I am.

Q. How long have you lived in Miami and Miami Beach?

A. Since late in '24.

Q. And you have practiced your profession as a lawyer here since that time?

A. Continuously since that time.

Q. Did you know Mr. Henry C. Yeiser in his lifetime?

A. Quite well.

Q. Under what circumstances did you first get acquainted with him?

A. Mr. Yeiser and I were in the same section of the Balloon School at Ft. Omaha, and had our bunks right next to each other in the Barracks. We were studying ballooning to become balloon observers.

Q. Was that when you were in the Army during the World War?

A. That is right.

Q. Had that friendship existed?

A. It had; we saw a great deal of each other in the War. Later on I was in command of the Cadet Company and Mr. Yeiser was my top sergeant. We became quite close friends then and it continued until the time of his death.

Q. After the War was over and Mr. Yeiser went back to business, and you resumed the practice of your profession, did you have occasion to see him and know his family?

A. I did. I saw him quite often; I knew his family; we visited back and forth at that time; at that time, immediately following the War, I lived in Indianapolis and he lived in Cincinnati, two and one-half hours apart by train, and we quite often spent week ends together.

Q. In the course of that friendship, did you in more recent years see Mr. Yeiser in Miami?

A. Yes, Mr. Yeiser visited Miami from time
57 to time for many years. He afterwards purchased through my office the Friendship I and I took many trips with him on that; later he purchased the Friendship II, and I took many trips with him on that; he was very hospitable with his boats and it was a very nice way for me to spend the week ends.

Q. Do you know Mrs. Charlotte Just?

A. Quite well.

Q. When did you first meet Mrs. Just?

A. Well, it was, I would say almost three years ago now, two and one-half years ago—in the early winter of '35.

Q. Where was Mrs. Just's home?

A. Mrs. Just's home was in St. Louis.

Q. Where did you meet her?

A. I met her at the Nautilus Hotel.

Q. She was visiting during the winter time at Miami Beach?

A. She and her mother—her aunt and grandmother—they stopped at the Nautilus Hotel.

Q. After you met Mrs. Just, did you get to know her quite well?

A. Yes, we went to a good many places together and seemed to be fond of going places together; I saw her fairly often.

Q. Did you meet Miss Ann Gruner?

A. I met Miss Ann Gruner a year or so later; she was here visiting Mrs. Just and I met her with Mrs. Just.

Q. Did Mrs. Just return to St. Louis the spring or summer after you first met her?

A. Yes.

Q. Did she later return then to Miami Beach
58 for the winter of 1935-36?

A. That is right; she did.

Q. Was that the time Miss Grunow visited Mrs. Just?

A. That is right.

Q. Who was Mrs. Just here with after that time?

A. She was living here with her aunt, Mrs. Bischoff.

Q. Do you remember an occasion about the 1st or 2nd of March, 1936, when Miss Grunow and Mrs. Just were on the Friendship II and became ill?

A. I do quite well.

Q. Were you aboard the Friendship II at that time?

A. I was.

Q. State the circumstances as you recall them, of that trip, the plans for it and how it came to be taken?

A. Miss Grunow was here visiting Mrs. Just. I had taken Mrs. Just and Miss Grunow aboard the boat once or twice, maybe more times than that when they were docked here, and Mr. Yeiser had invited all of us to take the trip with him. We had first made plans to take the trip a week earlier and did not take it. Then we made plans to take it on this Friday around the 1st of March.

Q. Was it February 28th, 1936?

A. It was the Friday right near the first of March.

Q. The Friday immediately preceding the 1st of March?

A. Yes.

Q. All right.

A. I came over town in the morning, left my bags aboard the boat and went to the office and came back about 2:30 or 3 in the afternoon. The girls were driven over by their driver and went aboard the boat and were aboard for luncheon when I came aboard; we got under headway right soon after that.

Q. Let me ask you right there, where was the boat docked?

A. Royal Palm Dock.

Q. At Miami?

A. At Miami.

Q. All right.

A. We got under headway with the boat soon after I went aboard, and that afternoon and early evening went down as far as the inside mouth of Angel Fish Creek and anchored just north of Pumpkin Key.

Q. About how far south of Miami is that?

A. I would say thirty-six or thirty-eight miles; it is right near Key Largo Anglers Club.

Q. Do you recall whether or not you got down there before dark or shortly after dark?

A. We got down there shortly after dark, I think. I am not clear on the exact time of arrival but I think we reached there shortly after dark.

Q. What did they do with the house boat when you got there?

A. Anchored and stayed there that night, Saturday—I don't recall definitely where we fished but we fished around Angel Fish Creek, possibly out on the reef by Crawford's Light; I think I went around fishing that day over on the banks.

Q. Did you fish from the house boat?

A. No; we towed a cabin cruiser; the cabin cruiser had a 250 horse power Paul Scott Motor. We had two boats. We used those two boats to fish from, tying those up to the house boat when we came back.

Q. Did the house boat remain anchored in that position then until you started back to port in Miami?

A. My recollection is that it did.

Q. That was Saturday you went fishing?

A. Yes, and Sunday we went fishing, and I wanted to be in my office Monday morning, so Sunday night we left—right before daylight to come back to the dock here.

Q. Do you remember what crew was aboard the house boat?

A. There was Captain Roberts, Chief Engineer Blount and a sailor—I don't recall his name—and a cook, and a cabin boy, or steward or waiter.

Q. And in addition to those persons, you and Mr. Yeiser, Mrs. Just and Miss Grunow were aboard?

A. That is right. Just a minute—there may have been another fishing guide on that trip but I am not clear as to that; sometimes we take another fishing guide with us; Roberts ran one fishing boat and the fishing guide ran the other.

Q. Can you describe briefly the lay out of
61 the Friendship II?

A. Above on the top deck there was forward a clear deck space; then came the Captain's quarters and the wheel house. The Captain's quarters were right in the wheel house, he had a bunk immediately aft of the wheel; after that was the living room or salon, I guess you would call it, aboard a boat, a very beautiful room; after that was Mr. Yeiser, the owner's cabin, and after that was a large after deck with a large wide couch on it.

Q. Across it?

A. Across it, from beam to beam. The deck below was the crews' quarters, and forward the galley and the refrigeration layout and then the engine room and the dining room, then the space for guests' cabins.

Q. Beyond the dining room towards the stern?

A. Yes, aft from the dining room there was a hall that ran down the center of the boat to about—it ended dead in against the largest state room, the only double state room, that state room ran from one side of the boat to the other and the hall ended against it; that state room had a bunk against the port wall and one against the starboard wall and it had a bureau or table between the two bunks.

Q. Now that state room—was there a private bath opening into it?

A. Immediately on the other side of the boat was a private bath which opened on to that state room.

Q. How many windows were in that state room?
62

A. I think there were four and I think there was one tub bath room there—there may have been six but I think there were four, two on each side.

Q. Go ahead with the description.

A. Immediately forward on the starboard side, immediately forward from this largest room on the starboard side was another bath that opened into the hallway, it didn't open into the stateroom and it was used by the guests in their cabins. Immediately forward of the two baths were two cabins, a single cabin on each side of the hallway.

Q. Now that hallway ran from the dining room back to the master state room?

A. That is right, aft of the master state room.

Q. Which of the state rooms did Mr. Yeiser occupy?

A. He occupied the owner's state room on the upper deck.

Q. Had he made a practice of occupying that state room at all times?

A. Always—at every time I had been aboard the boat.

Q. Had he lived aboard this boat?

A. Yes, he made it his home while he was down here.

Q. When had he come down that winter before this March 1st that we are talking about?

A. Well, I can't tell you exactly but I think we fished all around Palm Beach as early as September that Fall.

Q. So he had been living aboard the boat
63 and occupying that top deck cabin since about September?

A. He went back to Cincinnati once or twice or more.

Q. Did he spend most of his time here aboard the boat?

A. Most of the time, yes.

Q. Which state room did the ladies occupy?

A. On this trip, they occupied the master state room aft, the only double state room that was aboard the boat.

Q. Which state room did you occupy?

A. I occupied the starboard state room, starboard single state room.

Q. That was the state room on the right of the hall as you come out of the master state room and start toward the dining room?

A. Right.

Q. As the Friendship II left the Royal Palm Dock and headed south on this Friday afternoon, where did you and Mr. Yeiser and the other guests, the two ladies, spend the time?

A. We spent some of the time on the aft deck and sometimes forward, and sometime in the wheel house, watching the operation of the boat until dinner time;

then we had dinner in the dining room, and then we went in the living room a little while after that.

Q. Did either you or Captain Yeiser or the ladies spend any time in this double state room until after the boat had anchored down here and her engines were cut off?

64 A. I don't recall; we probably all went to our state rooms to get washed up before dinner.

Q. Was there any considerable period of time spent in that stateroom?

A. No.

Q. I show you a photograph marked for identification Claimant's Exhibit No. 7, and ask you if you recognize the view there shown?

A. I do; it has a view looking toward the port side of the boat showing the view of the port berth and the master state room and looking into the bath room which connected to the master state room.

Q. Is that a fair representation of that state room as it existed at the time of this trip?

A. I would say so.

Q. I show you another photograph marked for identification Claimant's Exhibit 8 and ask you if you know what that is, and if so, please state.

A. That is a view looking from the master state room, looking at the starboard bunk, showing the closet forward of the forward bunk.

Q. Are both of these views of the state room which Mrs. Just and Mrs. Gruner occupied on this trip?

A. Yes.

Mr. Mershon:

We offer these in evidence.

Mr. Parmer:

There will be no objection.

The Court:

They will be filed in evidence.

65 (Thereupon the photographs above filed in evidence were marked Complainant's Exhibits Nos. 1 and 2, respectively.)

Q. Mr. McKay, starting that Sunday afternoon, please relate what happened aboard the boat insofar as you know, up to the time she docked again in Miami?

A. We came in from fishing Sunday afternoon; after cleaning up, we had dinner; after having dinner, we sat around the living room for a while playing a little bit of contract and then went out on the after deck and sat around there for an hour or two perhaps, and the girls said they were tired and went to bed. I don't know what time they went to bed but I imagine around 11 or 12 o'clock. Mr. Yeiser and I sat around and "bulled" a while about old army times and then we retired. I went to my state room and went to bed. In the morning I awakened at daylight, and I looked out and had some idea we were under headway or moving and I saw we were not a great way from Miami and decided to dress and did, and when it came time for me to comb my hair, I didn't have—

Q. Let me stop you right there—

A. Are you talking about Monday morning? You said Sunday afternoon?

Q. You are talking about Sunday afternoon; not Monday morning.

A. That is right.

66 Q. Now you woke up Monday morning and saw the boat was underway—

A. And got dressed; when it came time for me to comb my hair, I had forgotten my comb when I packed the bags and had used a comb belonging to one of the girls, in fact at dinner time that night I kept that

about—the comb I used it merely at dinner time and took it to my state room but in the morning it was not in my cabin; I went back to their cabin, I thought it was about time they would be up anyway, and rapped, and there was no reply.

Q. You rapped on the door?

A. Rapped on the door; I rapped two or three times.

Q. Was the door open or closed?

A. The door was closed; I rapped two or three times and got no reply; I opened the door and looked in and they were both in bed fully covered, so I opened the door entirely and stepped in the room and walked over to the bureau which is between the two beds and right in the center of the bureau was this comb; I picked up the comb and turned around and started to the door; I was within a step or so of the door and it occurred to me rather peculiar that I had not seen any movement from either one of them, and I turned to Mrs. Just and I said: "Aren't you going to say good morning?" and there was no movement. I shouted: "Shoddy, are you going to say good morning?" There was still no indication of any movement; I looked at her then and I noticed that she was breathing and it seemed fairly normal to me, but her mouth hung down a little
67 bit unnatural and I went over to her and shook her and said "Shoddy", and she made no movement; she didn't move; I then turned across to where Miss Gruner was and I said: "Good morning, Ann", and she made no movement at all. As I recall, her mouth was quite tightly closed, and she was breathing natural through her nostrils. I put my hand on her shoulder and I shook her; I said "Ann", and she made no reply. I turned back again to Mrs. Just and shook her again rather hard and there was no reply. I had in mind at first that they were putting up a game on me. I immediately looked and saw that the windows were all closed in the state room. I immediately opened a

couple of them and when I looked in the bathroom, the bathroom windows were closed. I immediately opened a couple of the windows and then went to the stairs and went upstairs and found Mr. Yeiser sitting on a table just outside the wheel house, and I told him what I had found; he said: "Well, come on down and I will take a look at them", or words to that effect. We went below and he spoke to both of the girls and tried to awaken them and they didn't awaken, and he said: "Well we better get them to hell out of this", so we called the waiter and we told the waiter to call Captain Roberts, who was probably stronger than either one of us and Captain Roberts came down and carried them one at a time and laid them out on the bench on the back deck.

Q. You mean on that broad high back couch?

68 A. Yes, broad couch effect.

Q. About where were you by the time the ladies were laid out there in the open air?

A. Well I would say we were right—oh, within two or three miles or a mile or two of the Royal Palm Dock.

Q. Where did the Friendship II finally dock?

A. It docked at the Royal Palm Dock again.

Q. That is down here at the foot of Bay Shore Drive, near the Royal Palm Hotel?

A. Right.

Q. Then what happened after the ladies were stretched out in the open air on this couch on the top deck?

A. They stayed stretched out there until we reached the dock and we immediately had Captain Roberts—sent him to telephone—and told him to call Dr. Howell.

Q. Dr. Spencer Howell?

A. Dr. Spencer Howell; he had been attending Mr. Yeiser once in a while when he was here in Miami.

Q. How long did you remain aboard the Friendship II after she actually docked?

A. I don't recall exactly, but I went to my office I think around 10 or 10:30, and stayed there for a short time and then returned to the boat.

Q. Were you still on the boat when Dr. Howell came?

A. I stayed on the boat until Dr. Howell came.

Q. Did he bring somebody with him?

69 A. No, I don't believe he brought anyone with him, but the nurse who had attended Mr. Yeiser had been sent for, and came there by the time he did or just before.

Q. What treatment, if any, did Mr. Yeiser or you, or any of the boat crew, give, or attempt to give either of the ladies, on board the boat, before the arrival of Dr. Howell?

A. We fanned them and saw that they got all of the fresh air that was possible, and I think that was all that was done.

Q. Were there any signs of life in either of them?

A. Oh, yes, they were breathing steadily; we took their pulse and the pulse could be felt in each one of them.

Q. Were they awake?

A. They were not awake; they were unconscious.

Q. About how long was it after you and Mr. Yeiser went in the state room and undertook to pick them up, before you got into the dock, would you say?

A. Oh, I would say twenty minutes to half an hour before we tied up.

Q. Had Mr. Yeiser and you jointly discussed what was the matter with them?

A. Yes, we did, after we got them upstairs; we mentioned that it was probably carbon monoxide poisoning.

Mr. Parmer:

I object to anything more than an answer to the question.

Mr. Mershon:

I am going to ask him this next question.

70 Q. Mr. McKay, had you and Mr. Yeiser reached any conclusion as to what was the matter with these ladies before the time you got into port?

A. I couldn't say we had reached any conclusion.

Q. Had you discussed the possibility of what might be the matter with them?

A. We had.

Q. Had you formed and expressed to each other any opinion as to what might be the matter with them?

A. We had.

Q. What was that opinion in which he shared and which he expressed to you as to what might be the matter with them?

Mr. Parmer:

I object to that as being irrelevant to this case. In any case, it is the opinion of a layman not qualified to form an opinion with regard to what illness, if any, these people were suffering from.

Mr. Mershon:

It is an admission against interest, if Your Honor please, because the decedent is in the position of the defendant in this case.

Mr. Parmer:

This is on a matter, Your Honor, regarding something that we know he is not competent to have an opinion on, and he is dead.

Mr. Mershon:

I will defer the pressing of that question until I have asked one or two other questions.

Mr. Parmer:

All right.

71 (By Mr. Mershon):

Q. What did you and Mr. Yeiser take into consideration in reaching your conclusion or opinion as to what was the matter with these ladies?

Mr. Parmer:

I object to that as being incompetent and immaterial.

The Court:

I think the objection is well taken.

Mr. Mershon:

If Your Honor please, he objected to the opinion and I asked this merely to show that the opinion was a logical one; he objected to the other question because it was the opinion of a layman, and I merely asked this to show that this opinion was a logical one and one which a layman may reasonably have reached. In addition to that, the matters that they took into consideration may well be admissions against interest.

The Court:

I think an admission against interest ought to be on facts and not an opinion.

Mr. Mershon:

If Your Honor please, I will ask that question a little differently.

Q. Did Mr. Yeiser make any expression at this time as a part of what was going on there as to what was the cause of this illness?

A. Yes, sir.

Q. What did he say was the cause of it?

Mr. Parmer:

No objection.

A. He said that he thought it was caused by carbon monoxide gas.

Q. I believe you stated that Dr. Spencer Howell came while you were aboard the boat?

A. That is right.

72 Q. To the best of your recollection, what did he do?

A. He examined the girls by taking their pulse, taking their respiration—he raised their eyelids and looked in their eyes. He examined their extremities, etc., and then gave some instructions for the nurse.

Q. Did he give any treatment in the way of various things, if so, what did he give? Any injections.

A. He didn't give any, but the nurse gave a hypodermic.

Q. While he was there?

A. While he was there.

Q. Did the nurse apply any other treatment while he was there, any respiration or artificial—

A. There was an oxygen tank that came aboard or a steel tank which was pointed out as an oxygen tank, with a kind of head arrangement to go over the patient's nose and mouth, connected to it. He gave the nurse some instructions about that. I didn't hear that.

Q. Did Dr. Spencer Howell make any inquiry as to what had happened to them?

A. Yes, he did.

Q. Did he inquire of Mr. Yeiser?

A. He inquired of Mr. Yeiser and he inquired of me?

Q. Do you know what Mr. Yeiser told him?

73 A. Yes, the inquiry was made sitting opposite both of us—one inquiry was made sitting beside both of us on the couch.

Q. What did Mr. Yeiser tell him?

A. He told about finding them—about my finding them, as I have told you.

Q. What did he tell the doctor as to the cause of their condition, if any?

A. He told him he thought it was a carbon monoxide case.

Q. Did Mr. Yeiser offer any explanation or reason why he thought it was a carbon monoxide case, in other words did he say—

A. That there were motors running on the boat in the morning.

Q. Now when did Miss Ann Gruner recover her consciousness?

A. I would say about 11:30 or 12 o'clock.

Q. That same Monday morning?

A. That same Monday morning.

Q. Was she on the boat after that time?

A. She was.

Q. What became of her after that?

A. She stayed on the boat during the day until about seven or eight o'clock that evening, and I took her up to Mrs. Just's aunt, Mrs. Bischoff's home, on the beach.

Q. What became of Mrs. Just? In other words, how long did she stay on the boat and what happened to her after she left?

A. She stayed on the boat until a little while after noon and then after Dr. Howell's orders, she was taken to St. Francis Hospital.

Q. Did you go along to St. Francis Hospital when she was taken there?

A. I followed in a car.

Q. You were at St. Francis Hospital when she was taken in there?

A. I was.

Q. Did you see Dr. Howell there when she arrived there or when you arrived?

A. Yes, she was there in his car, or in the ambulance— I have forgotten.

Q. In other words, he took her to the hospital as his patient?

A. Yes.

Q. Did you visit Mrs. Just after she was hurt?

A. Yes.

Q. How often would you say?

A. Daily for a time.

Q. What was her mental condition? Did she recognize you?

A. Well, after the first day or so—after the first day or two, she did—she didn't for the first day or two, but after that she did.

Q. Was she rational?

A. Well, she wasn't entirely rational. She wasn't herself.

Q. Did she carry on a conversation with you and remember what you said to her and what she said to you?

A. No, her memory was bad; she couldn't remember anything about the boat trip for a while and she couldn't remember anything before that; sometimes she would remember things that went on, and other times she wouldn't.

Q. When did she leave here to go back to St. Louis?

A. What is that?

Q. When did she leave here to go back to St. Louis?

A. I don't know. I would think it was around the latter part of April or early in May.

Q. Did you see her on any occasion after she left the hospital?

A. Many.

Q. She left the hospital about six days after she went in there, did she not?

A. That is my understanding, and my recollection.

Q. Tell us how her mental and nervous condition, as you observed it, after she came out of the hospital, compared with it as you knew her before her illness?

A. Well, before she was always bright and vivacious and fairly high strung and interested in everything that was going on; afterwards she couldn't remember; her memory wasn't clear; she was morose and melancholy.

Q. Was she interested in tennis, cards and dancing, things that were going on around her, after she came out of the hospital?

A. Not after she came out of the hospital.

Q. Had she been before she went to the hospital?

A. Very much; she resorted to tennis, dancing and swimming—things of that kind.

Mr. Mershon:

That is all; you may examine the witness.

Cross Examination.

By Mr. Parmer:

Q. Mr. McKay, you also, in connection with your friendship for Mr. Yeiser, did business for him, did you not?

A. Yes.

76 Q. And when I say business, we both mean "legal business"?

A. Yes.

Q. And he used to allow you, did he not, to have the use of this vessel when he was away?

A. Yes.

Q. And you could have it taken where you wished, and where you would direct the Captain to go?

A. That is right.

Q. You could invite your own friends on it, at your own election?

A. That is right.

Q. And you had, as a matter of fact, taken advantage of that invitation on the part of Mr. Yeiser?

A. Many times.

Q. Now, were you aware that prior to the trip on which the events with which we are principally concerned took place, that Mr. Yeiser was an alcoholic or perhaps a dipsomaniac?

A. Well, he was pretty close to an alcoholic.

Q. You were aware, were you not, of the fact, that by reason of whatever condition it was, alcoholism if it be that, that he had been placed under a guardianship?

A. Yes.

Q. By a Court in Cincinnati?

A. Yes.

77 Q. And the control of his effects had been taken from him personally and given to the guardian, whose name was Mr. Balch?

A. That is right.

Q. Are you also aware, or were you at that time, that for about a month prior to this voyage with which we are concerned, that Mr. Yeiser had been under the care of a physician, in an effort to cure him to some extent, of his alcoholism?

A. Yes, I think I was; we were all trying; all of his friends were trying to cure him.

Q. When you say "all of his friends", you include yourself?

A. Certainly.

Q. Well, referring to you personally, you had a personal interest in having him give up drinking so hard, as his habit was. Please answer the question.

A. I had a very personal interest.

Q. Answer the question.

A. I said I had a very personal interest.

Q. Then it is my hearing.

A. All right.

Q. Just before this trip took place, do you remember that you were requested by Dr. Howell not to go on it, and not to allow Mr. Yeiser to go on it?

A. I don't think directly. Before this particular trip, the week before, we were talking about going and I didn't go because Mr. Yeiser had been drinking; I would never go aboard his boat if he had been drinking and would never drink with him aboard the boat, of course, or anywhere else.

Q. Well, I am referring to this particular
78 trip when Mrs. Just and Miss Grunow were along as passengers. I am asking with regard to that particular trip. Do you not remember that Dr. Howell pleaded with you not to allow Mr. Yeiser to carry out his intention to go on that trip because it would set him back?

A. No, I don't.

Q. Do you remember that the Captain of that boat himself, decided not to make the trip?

A. No, I don't.

Q. Well, were you not aware that when Mr. Yeiser left the control of the doctors and the nurses who were keeping him on a strict diet so far as liquor was concerned, that the likelihood was that he would drink too much?

A. No, not so long as I was present, not as much as he would under the control of the doctors and the nurse.

Q. Do I understand you correctly then that when you were present he would drink less than if the doctors were—

A. He seldom—

Q. Answer the question.

A. Yes.

Q. All right. You say that you did not drink in his presence while he was on the vessel on this trip?

A. I do.

79 Q. Do I understand from that, that you did drink on the vessel but not in his presence?

A. I think I had a bottle of brandy in my bag in my stateroom, and I think I took a drink out of that before dinner; I won't even swear to that, but I know I had none in his presence; and I know the girls had none in his presence.

Q. Well as a matter of fact, isn't it true that you and the girls were aware of Mr. Yeiser's condition, so far as alcoholism is concerned, and you were so particular about not letting him know that you were drinking liquor, that you kept liquor in the girls' room?

A. It is not.

Q. Didn't you get some drinks in the girls' room?

A. I think Sunday evening before dinner, after we had come in from fishing, we had a drink, I believe in the girls' room.

Q. And the drink was prepared there?

A. The drink was prepared there.

Q. Out of a bottle that was there?

A. Out of a bottle which I brought in.

Q. Was that the bottle of brandy to which you have already referred?

A. I imagine so.

Q. Let us not use your imagination; let us know what you remember.

A. I remember that it was.

Q. Very good.

80 A. All right.

Q. After you got through with that brandy, did you leave it there?

A. I did not.

Q. Now, Mr. McKay, this trip began on Friday and ended on Monday morning and was to a certain place down the harbor from Miami, was it not?

A. Yes.

Q. You don't know what you call this place?

A. Down Biscayne Bay here.

Q. Biscayne Bay?

A. Yes.

Q. You told us that after the boat came to rest, that is the big boat came to rest on Friday night, that it did not move again until Monday morning?

A. Probably it did, we might have. Well, no, I don't think it did.

Q. But you would not trust your own recollection in that respect?

A. I would not trust my own recollection in that respect. I made a good many trips down there.

Q. Now, as a matter of fact, during those three days when you were aboard on this ship, did not Mr. Yeiser do a lot of drinking?

A. I did not see him do any. He did some—

Q. That is an answer.

A. All right.

81 Q. Did he show the effects of having done it?

A. He showed the effects that I thought he had had some.

Q. That is he appeared to you to be intoxicated?

A. No, he didn't appear to be intoxicated.

Q. Would you describe it as slightly tight?

A. No, I wouldn't even say slightly tight; if you want me to describe it, I would say perhaps a little bit exhilarated.

Q. And that is the worst you saw him all of the time that he was away?

A. That was the worst I saw him all of the time that he was away.

Q. Now, would it refresh your recollection, Mr. McKay, in that respect, if I were to suggest to you that when he was seen by Dr. Howell, that Dr. Howell considered that all of his work for the month past had been wasted, and that he was a physical wreck?

Mr. Mershon:

We object to that, if the Court please.

Mr. Parmer:

I am asking him if it would refresh his recollection in that respect.

Mr. Mershon:

It is immaterial and irrelevant; his recollection has nothing to do with what Dr. Howell may have told someone else—if he is going to tell his recollection from what Dr. Howell told him—

Mr. Parmer:

This is cross examination. This witness has made a statement, and manifestly I do not believe it, and I am try to see if he will refresh his recollection from
82 something I have offered to him. Anything that will refresh his recollection is pertinent. I am merely asking him if it will.

The Court:

You are not asking him to refresh his recollection by anything that he has previously said or done?

Mr. Parmer:

No.

The Court:

You are asking him to refresh his recollection by something independently and which has not been proven in this record?

Mr. Parmer:

That is correct.

The Court:

I think the objection is well taken. You may proceed.

(By Mr. Parmer):

Q. Well, did you observe yourself, that at the close of the voyage, Mr. Yeiser had gone back very much physically?

A. I did not.

Q. Did you see him in the next three days?

A. I did.

Q. And you know that he died at the end of the third day thereafter?

A. Yes.

Q. Now, Mr. McKay, you had charge in some respects, did you not, in taking his body back to Cincinnati?

A. Yes.

Q. And you and Captain Roberts went with the body to Cincinnati?

A. Right.

83 Q. And you saw Mr. Balch?

A. I did.

Q. Now when you were in Cincinnati and you saw Mr. Balch, did you say anything to him about what had happened concerning this voyage which was lately ended?

A. I did not.

Q. Did you say anything about the girls having been ill on the trip?

A. I did not.

Q. Did you instruct Captain Roberts not to say anything to Mr. Balch about it?

A. I don't believe I instructed him; I think we talked it over and determined that we would not say anything about it.

Q. Is that a positive statement that you did not instruct him to say anything to Mr. Balch about it?

A. I would say that I did not instruct him.

Q. Well now, you had been looking after the business interests of Mr. Yeiser for sometime?

A. Down here?

Q. Yes.

A. Yes.

Q. And you knew it was a matter of importance, did you not, to the business interests of Mr. Yeiser, as represented by Mr. Balch, to get information with respect to a matter of this nature?

A. No, I didn't think so at that time.

84 Q. Your experience, Mr. McKay, is largely in defending people against claims for personal injuries?

A. It is.

Q. And did it occur to you that such a claim might arise out of the circumstances of which you were a witness?

A. It did not at that time, not insofar as I recall.

Q. Was it merely a matter of neglect on your part that you did not speak to Mr. Balch about it, or was it a matter of intention?

Mr. Mershon:

We object, on the ground that it is incompetent, irrelevant and immaterial.

The Court:

Let him answer.

A. It was a matter of intention.

Q. In other words, you wished to keep the information from him about this?

A. No, I would never say that.

Q. Explain it in your own words.

A. I thought that these girls would be well soon and that it would just stir it up, I can't put my mind back to where it was at that time, but I didn't have any idea

of a claim at that time. It was a pretty sad time for all of us and I did not want to stir it up any more than we could help.

Q. That is you didn't want to stir anybody up at this end, at Miami?

A. No, at Mr. Yeiser's home in Cincinnati.

Q. Well, do you mean to say that if you told Mr. Balch, that you would stir up someone at Mr. Yeiser's home?

85 A. Well, there would be a lot of questions asked and I didn't think it was worth telling him about it.

Q. Mr. Balch is a lawyer, you know?

A. Yes; he is.

Q. A prominent lawyer in Cincinnati?

A. That is right.

Q. And you thought a lot of questions might be asked?

A. Yes.

Q. What sort of questions might, in your opinion, have been asked that you would not wish to answer?

A. Nothing that I would not wish to answer, but we had been out on a trip like this just the week end before and people had been ill, and he might have thought that Mr. Yeiser's death had something to do with monoxide gas as well, and it just seemed better to me—I just can't give you all of my reasons now that I had on my mind.

Q. Now, Mr. McKay, did you use this boat on any prior occasion when you and Mrs. Just were the only passengers?

A. I think I had; I think Mrs. Just and I went over to Ft. Meyers and spent the week end on the boat. I can't tell you exactly when it was, but it was sometime before this.

Q. Well, there was more than one occasion, when such took place, was there not, just you and Mrs. Just?

A. I don't think that Mrs. Just and I were out without Mr. Yeiser but the one time I am speaking about—maybe twice, but certainly not more than twice and I think only once.

86 Q. As a matter of fact, you and Mrs. Just were out at least three times?

A. Well how you mean?

Q. Well, what you mean?

A. No.

Q. In other words, the occasions that you were out, were on week ends?

A. Right.

Q. Were they occupying the whole week-ends?

A. No, go over Saturday and come back Sunday.

Q. Now, at that time, Mr. McKay, you were married, were you not, and still are?

A. Yes; separated.

Q. Separated from your wife?

Q. Yes.

Q. How long prior to these events had you been separated from your wife?

A. About a year—a little over a year.

Q. And you knew, did you not at the time that Mrs. Just was your companion on this vessel, that she had been divorced recently?

A. Yes.

Q. How recently did you understand she had been divorced?

A. About a year, I think, as well as I recall.

Q. Now, had you made trips with Mr. Yeiser on week ends on which you and he had been accompanied by other people?

87 Mr. Mayne:

I object to that; I think this is pretty far afield.

The Court:

What is the materiality?

Mr. Parmer:

If I do not disclose too much the purpose of my examination, the materiality is this: That this is a mental case, that is the only damages that I think they are asking for here is for the damage to the mind of Mrs. Just.

The Court:

We are not hearing damages now.

Mr. Parmer:

I know but I am bordering on the question of liability. I hope to prove on the question of liability something with respect to causation, and I hope to show eventually that whatever mental trouble Mrs. Just had was by reason of being associated, not only on this trip, but on prior trips, which in their nature by reason of what took place on the trips, was a matter of disgrace and it affected her mind to the extent—

The Court:

A matter of what?

Mr. Parmer:

A matter of disgrace. She had feelings of disgrace and as a result of it, she felt that because of that, her former husband who had been divorced from her, might regain the custody of her child. It seems that is one of the principal things that affected this woman's mind.

The Court:

Objection sustained.

Mr. Parmer:

Very well. I will approach the same thing in a different way which I think will meet with Your Honor's approval.

88 Q. Didn't you on this occasion, in accordance with your practice on others, provide Mr. Yeiser with women to accompany him on the boat?

A. No.

Mr. Mershon:

We object to that question, if the Court please.

The Court:

He has already answered it.

A. I never supplied Mr. Yeiser with women to go out on a boat.

Q. Did you speak to Mr. Yeiser about a certain book which you had in which were inscribed the names of a number of women?

Mr. Mershon:

I object to that; it is immaterial to any issue in this case and it is highly improper.

The Court:

I think it is immaterial and irrelevant; the objection is well taken.

Q. Mr. McKay, were the names of Mrs. Just and Miss Grunow in any book which you showed to Mr. Yeiser and to which you referred as your stud book?

A. No.

Mr. Mertens:

We object to that.

The Court:

Objection sustained.

A. No, I never referred to anything to Mr. Yeiser as a stud book. You are evidently familiar with that sort of thing; I am not.

Q. Well; I thank you.

A. All right.

Q. Well, Mr. McKay, was there liquor on the boat besides the brandy that you brought?

A. I don't know; I assume that there was.

Q. Well, as a matter of fact, don't you know
89 there was liquor in a certain ice box on board the boat?

A. No, I don't; there may have been.

Q. Well, did you see any of the women, that is Mrs. Just and Miss Gruner, go to the ice box in order to get drinks, while you were aboard the boat?

A. I didn't, and I am morally certain they did not.

Q. Well now, when you say that you are morally certain, what do you mean?

A. I mean that I knew Mrs. Just and Miss Grunow quite well. I had seen quite a lot of Mrs. Just, and I have never seen her take more than one or two drinks at any one time. I have never seen her intoxicated. I have seen Miss Grunow several times, and I have never seen her take more than one or two drinks; in fact, I have offered them at times when I wanted more than one or two drinks but they would not take more than one or two drinks. The insinuation in regard to their drinking liquor was, to my mind, most untrue and unfair.

Q. Well now you have had your say.

A. No, you asked for it.

Q. Oh well I can take it.

A. So can I, old top.

Q. Let's see if you can. Now, Mr. McKay, what time did you come down to the vessel in order to bring Miss Grunow away from it?

A. About six o'clock.

Q. That again is your recollection now, about
90 that?

A. No, I would not be entirely certain what time it was. I think I took her away at seven or eight.

Q. It might have been ten?

A. Could have been what?

Q. Ten o'clock?

A. What do you mean, might have been ten o'clock?

Q. It might have been ten o'clock at night when you came for Miss Grunow?

A. No, because I was taking her out to where she was staying, and it could not have been that late that I was taking her out there.

Q. You were sent for to take her, were you not?

A. I don't recall whether I was sent for or not. I wouldn't think—well, I just don't recall. I had expected to take her home all day.

Q. You say you expected to take her home all day?

A. Yes.

Q. Why didn't you come earlier?

A. Well, I don't know. I suppose I was busy; we took Mrs. Just to the hospital. I have an office here and was busy down there.

Q. When you say you expected to take her, do you mean that you expected someone to call you up and say when she was ready to go?

A. No, I don't think that I did.

91 Q. But you expected to go down and get her when you had time?

A. That is right.

Q. Now, as a matter of fact, when she left the vessel, wasn't she then under the influence of liquor in your company?

A. She was not. •Figure it out. I took her directly to Mrs. Just's aunt, who was living there on the Beach, and I would not take a girl in there,—visiting girl—drunk. I would have left her on the boat, if something like that had happened.

Q. Well, now, the night before the morning when you arrived in Miami and while you were playing bridge, did you have any liquor?

A. We did not.

Q. Now at the time when you were playing bridge, you were doing that in the salon—no alcoholic implication intended—just beyond the Captain's bunk, were you not?

A. Right.

Q. Did you have any glasses on the table?

A. We probably did; we usually had some sort of soft drinks.

Q. Such as?

A. Coke, ginger ale, orange juice and limes—no alcohol—no alcohol in Mr. Yeaser's presence or in my presence on that boat there—you seem to forget—

Mr. Farmer:

Please may we have the witness admonished to please answer the question.

92 The Court:

Mr. McKay will have an opportunity to supplement that. You will be allowed to make a supplementary statement on your own motion or by questions by Mr. Mershon.

Q. Now, Mr. McKay, at the time that these girls were brought from the boat, you didn't think that either one of them was seriously injured, did you?

A. At the time they were brought from the boat, I was worried about Mrs. Just, because she had to be taken to the hospital.

Q. And, therefore, you expected a very quick recovery, did you not?

A. I did. Up to that time I thought carbon monoxide gas was just like you didn't get enough oxygen, and did not know it was poisonous.

Q. Well, now, at any of the meals was liquor served?

A. It was not.

Q. When I say "liquor", I do not necessarily mean whiskey or gin. Was any wine served?

A. No wine or beer served.

Q. Now that Sunday night. At the evening meal, do you deny that champagne was served at that meal?

A. I most certainly do.

Q. Do you remember when you were out in a small boat fishing, that on one of the days when you were fishing, there was a bottle of wine brought along?

A. I do not.

93

Q. Do you remember that one of the women drank it, or drank part of it, and became ill?

Mr. Mayne:

I object to that as being immaterial; whether she did or not. The question is whether these girls received this monoxide gas on this boat; that is the issue we are trying out and not whether they were drunk on a day previous. It is what happened on this particular morning, or the night that we are interested in, and nothing that transpired prior to that time. Now, I do not think we can go into the morals of these girls. Assume that everything that Mr. Parmer has stated to Your Honor is true, which is not true, it does not make any difference.

The Court:

Objection overruled.

Mr. Mayne:

Exception.

Mr. Mershon:

Do we understand that exceptions follow all adverse rulings?

The Court:

Yes. They will be so noted.

Mr. Parmer:

Read the question, please.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I do not. I remember one of the girls became ill, but my understanding was that it was from seasickness.

Q. Which one was that?

94 A. I think Mrs. Just. They were both a little bit ill; I think Mrs. Just was the one who was the most ill from seasickness; we went out fishing in a very rough bay and a very rough day, and that is nothing unusual.

Q. Well the effects, you say, were from seasickness?

A. Yes.

Q. When did that occur?

A. I think it was Sunday evening.

Q. Did you observe Mrs. Just's complexion at the time you thought she was seasick?

A. No, when she mentioned being uncomfortable we immediately turned around and came in.

Q. Did she vomit?

A. My recollection is that she did.

Q. Now then that meal that occurred after she came in on Saturday night that I am asking you about, when I am asking you about champagne—

A. I understand that.

Q. And you say—

A. There was not any served.

Q. At any of the other meals was wine served?

A. It was not.

Q. Now, Mr. McKay, do I understand you correctly that during Saturday and Sunday and up until the time that the boat arrived in Miami, the only drink that you had was a small amount from this brandy?

A. That is right.

95 Q. And the only drink?

A. I might have had two small amounts.

Q. And in the case of the girls, the only drink they had was out of the same brandy bottle?

A. That is right.

Q. That is the only drink that you saw them take?

A. That is the only drink that I saw them take.

Q. When did you first miss your comb?

A. I don't recall; I imagine Saturday night, or Friday night, before dinner.

Q. Well, Mr. Yeiser had more than one comb, did he not?

A. I don't know.

Q. Did you ask him?

A. I don't know; his cabin was on the floor above, and the girls' cabin was right down the hall from where I was.

Q. Now you got the comb first on Saturday morning?

A. I don't know whether I got it Friday night—I probably got it Friday night. I wouldn't know.

Q. What were you doing between Friday and Monday morning trading this comb back and forth when anybody wanted to comb their hair?

A. They took it out of my room at least once or twice, and I got it out of their room.

Q. As far as you know, there was but one comb for the three of you?

A. No, I think there were two or three combs in their room.

Q. Was there any necessity for having the
96 comb to go back and forth if there were three?

A. I don't know if there was any necessity but it was done.

Q. Now, Mr. McKay, what I want to know, on that morning was it really the comb that you were trying to get in that room, or was it liquor?

A. It was a comb; it was not liquor.

Q. I want to know, Mr. McKay, if the liquor—some liquor—was not kept in that room, where anybody could go and make a drink?

A. There was not to my knowledge.

Q. Well, now, Mr. McKay, in your opinion don't you know that that is a familiarity in dealing with women that is generally observed?

Mr. Mayne:

I object to that as being immaterial.

Mr. Mershon:

Let him answer it; he can answer it.

The Court:

I think it is immaterial. The objection is sustained.

Q. Were you accustomed to enter that room on other occasions while the women were in bed?

A. I think that was the only time.

Q. What was that?

A. That is the only time I was in there.

Q. Just when you were looking for the comb?

A. Will you let me finish my answer before. You broke in.

Q. I beg your pardon; you had not finished?

97 A. I think that was the only time I was in there when they were in bed and I never went in without knocking.

Q. When they did not awaken on this occasion, you went in with the intention of waking them?

A. I looked in and saw that they were in bed and covered; and then I went in.

Q. Did you think it was time for them to get up?

A. It wasn't very late; it wasn't time for them to get up, but I thought they would be awake.

Q. But as they appeared to you; they appeared to be sleeping, did they not?

A. They did.

Q. Did you think it was strange that a sleeping person should not answer you when you spoke to them?

A. Yes, I took it—

Q. In other words, you expected them to be wakeful after that time?

A. I don't know what I expected; I opened the door and walked in for the comb.

Q. You say you saw these women sleeping there and you expected them when you spoke to them, to speak back, is that what you mean?

A. When I spoke to them I expected them to speak back.

Q. Although they were sleeping?

A. No, I expected my speaking to them would awaken them.

Q. In other words you intended to awaken them?

A. I intended to.

98 Q. Because you thought it was time for them to get up?

A. No, not because of that.

Q. What was the reason you wanted to awaken them?

A. I wanted to say good morning, that was all.

Q. I see.

A. I am glad you do.

Q. Now, Mr. McKay, on the evening before, is it not a fact that you did not leave the salon until in the neighborhood of one o'clock?

A. No, that is not a fact.

Q. Mr. McKay, you say you occupied the starboard state room?

A. Right.

Q. Don't you remember that while you were on the vessel you expressed yourself as being unable to understand why you had not been affected by carbon monoxide gas because you were sleeping on the port side of the vessel?

A. No. I could not have said that.

Q. As a matter of fact, were you not sleeping on the port side of the vessel?

A. No, I was sleeping on the starboard side.

Q. Did you talk to Mr. Balch about this matter at any time after it happened?

A. I talked to him over the telephone. I don't recall whether I have seen him since then or not. If I had seen him, undoubtedly it would have come up in our conversation.

99 Q. You appreciate, do you not, Mr. McKay, that the hole which was afterwards found in this exhaust pipe here, was right under your cabin?

Mr. Mertens:

We object to that question on the ground that there is nothing in the record to show that that is true.

Mr. Mershon:

As a matter of fact, it is not true.

Mr. Parmer:

I am not offering that as proof of a fact. I am offering it as proof of this man's understanding with respect to his statement that he was on the starboard side of the vessel, and I expect to prove that he was on the port side.

The Court:

You asked him a question that assumes a fact which is not proven in evidence. The objection is well taken.

Q. Mr. McKay, how long after the two girls were brought out on deck did Dr. Howell come?

A. I would say three-quarters or an hour—that is 15 or 20 minutes after they were brought on deck—then I would say it was half an hour before Dr. Howell got there.

Q. Were you present when the girls were brought out of the stateroom and up on deck?

A. Yes, I was.

Q. Were they in their night clothing at that time?

A. They were.

Q. Did you observe anything with respect to the night clothing, as to whether it was wet or dry?

A. If it had been wet I would have noticed
100 it, because they were laid down on the after deck.

Q. Do you think that you might have forgotten that?

A. No, sir.

Q. Now, as a matter of fact, Mr. McKay, were not the night gowns of both women wet?

A. No, they were not.

Q. Now, you say while Dr. Howell was there, he gave an injection in the arm of Mrs. Just?

A. I don't recall whether he gave it or the nurse gave it.

Q. How close were you to Mrs. Just when that was done?

A. I suppose five or six feet away.

Q. How long did you remain on the vessel after that was done?

A. I am not exactly sure; I went up to the office sometime during the morning, and then came back

again, and I imagine I remained there half an hour to an hour.

Q. Well, then, if we remember what you have stated with regard to Dr. Howell's coming, and the time you remained there after the boat docked, would that mean that you left about fifteen minutes after he arrived?

A. No, I don't suppose that I left that soon after he arrived.

Q. Tell us how soon after he arrived did you leave?

A. I don't know.

Q. How long were you gone?

A. I don't know, I imagine half an hour to an hour.

Q. Now, you say Miss Grunow recovered consciousness at about one o'clock in the afternoon?

A. I think earlier than that.

Q. What time would you say?

101 A. I would say around noon time.

Q. Around noon time?

A. Yes. It might have been one o'clock; I don't know the hour, but my impression is it was earlier.

Q. Now, when you refer to unconsciousness, do you mean a person is absolutely out?

A. Right.

Q. Don't you remember Mr. McKay, that Miss Grunow was talking long before that in the morning?

A. No, I don't. I remember when she came to, she said "hello", and recognized Mr. Yeiser and myself.

Q. That took place at 12 o'clock?

A. Well I don't know exactly when it took place.

Q. Well around 12 o'clock?

A. That is my best recollection.

Q. Now, see if your recollection can go so far as to what took place when the doctor first came there, with respect to Miss Grunow. Don't you remember that she was talking shortly after the doctor was there?

A. No, I don't.

Q. Where was she when the doctor was there?

A. She was later moved into the bed in Mr. Yeiser's cabin, but I don't think she was moved in there until the doctor had been there; I am not exactly clear on when she was moved in there; I think it was after she had recovered somewhat.

102 Q. It was while the doctor was there and you were there at the same time that she was brought into Mr. Yeiser's room?

A. I won't be sure about that. I was there when she was brought into his room, I know she was in there later in the day and I am not clear when she was moved in there.

Q. Now, you visited Mrs. Just while she was out at the hospital?

A. I did.

Q. On what date? The following day?

A. I don't recall what day; I assume on the following day.

Q. Well before Mrs. Just went to the hospital, did she talk at all?

A. No, not in my presence.

Q. Did she have her eyes open?

A. My recollection is only as the doctor pried them open.

Q. When you first saw her in the hospital, did she have her eyes open?

A. No, she did not.

Q. Did you speak to her?

A. I don't recall; I imagine I tried to speak to her several times during the day to see if she would recognize my voice, and she didn't.

Q. Well, didn't she recognize you while you were on the ship?

A. No, I am quite certain she did not.

Q. Now, you say that while she was at the hospital later than the occasion about which we have just referred,

103 you did talk to her so that you came to the conclusion that she recognized you?

A. The later days?

Q. Yes.

A. Yes.

Q. And later on after she left the hospital, sometimes she would remember things and sometimes she would not?

A. Right.

Q. Some of the things which had happened on the trip, and some of the other things she wouldn't?

A. Well, she didn't remember—yes, that is true for a time; there were times she didn't seem to remember any of the trip.

Q. And the other things she would remember?

A. Later on her memory would bring back parts of the trip.

Q. How long after she went to her place of abode in Miami was it before you visited her?

A. You mean from the hospital?

Q. After she left the hospital?

A. I don't recall the date she went home, when she came home from the hospital; I don't know whether I was back—I went up to Cincinnati with Mr. Yeiser's body; I don't know when she went home with reference to that trip; she went home while I was up there.

Q. But you state it was shortly after she left the hospital, or shortly after you came home from Cincinnati?

A. Yes.

104 Q. Within two or three days of either event, is that correct?

A. That is correct.

Q. Thereafter you continued to visit her?

A. Yes.

Q. Regularly?

A. Regularly.

Q. As long as she stayed in Miami?

A. Yes.

Q. And since she has returned to St. Louis, have you corresponded with her?

A. I think I wrote her one letter; her mental condition was not such that I knew whether to write or not; I believe I wrote her one other letter.

Q. How long after the events with which we are particularly concerned was it that that happened?

A. That was about seven or eight months afterwards.

Q. I take it that this is all of the correspondence?

A. That is all.

Q. How long have you known Mr. Mayne?

A. I would say about nine years.

Q. You have known Mr. Mayne in Miami, have you not, when he has been here?

A. Well, I have known him in St. Louis and other spots.

Q. And other occasions?

A. And other occasions, and Mr. Mayne introduced me to Mrs. Just.

Q. Oh, he did?

A. Yes.

Q. And you introduced her to Mr. Yeiser?

105 A. That is right.

Q. And also Miss Grunow to Mr. Yeiser?

A. That is right.

Q. Now, Mr. McKay, who was it that first said anything about carbon monoxide gas, you or Mr. Yeiser?

A. I can't remember for certain; we discussed it together.

Q. It might have been you who said it first?

A. It might have been, but Mr. Yeiser's engineering—

Q. Wait a minute. That is an answer.

Mr. Mershon:

I think he is entitled to finish his answer.

Mr. Parmer:

I asked him a simple question; he can answer it yes or no; it needs no explanation.

The Court:

He can make an explanation if he wants to.

Mr. Parmer:

Very well, if he wants to make an explanation of his answer, that is allright.

A. It might have been me but it was probably Mr. Yeiser, but I always deferred to him any engineering matters; he had some engineering training.

Q. Now at the time he was discussing this with you, wasn't he, as a matter of fact under the influence of liquor?

A. No, he was not.

Q. You were pretty well acquainted with his habits with regard to consumption of liquor, were you not?

A. Yes.

Q. How much liquor would that man take in a day, sir?

A. I don't know.

106 Mr. Mayne:

I object to that; it doesn't make any difference; it is immaterial in this case how much he took; it does not make any difference how much Mr. Yeiser took; so far as these girls are concerned, it is certainly immaterial whether Mr. Yeiser was drunk all of the time. It doesn't make any difference.

The Court:

I think that is proper cross examination.

Q. Tell me, Mr. McKay, if you can answer that question.

A. How much liquor he drank a day?

Q. Yes:

A. I don't know.

Q. Well had you been on any trips alone with him?

A. How much do you drink in a day?

Q. I would have no hesitancy in telling you if it were relevant, but I want to know from you, since you were so close to Mr. Yeiser, and were on the boat with him so often, and since he was a known alcoholic. I want you to tell us how much you know that he drank a day?

A. Well, you see if he drank any liquor when I was aboard, he sneaked it, because he did not do it with my consent, and I would not go aboard the boat until I had a promise from him each time that he would not drink on that trip.

Q. And each time you received the promise readily and it was given, it would be violated.

A. It wasn't always violated.

Q. But frequently?

A. Frequently, yes.

Q. And was this particular trip with the two
107 women, Mrs. Just and Miss Gruner peculiar so far as Mr. Yeiser was concerned, in that he did not drink very much liquor on that trip, whereas on most other trips he did?

A. No, he did not, in the first place. On some trips he did. On this trip he undoubtedly drank some but he was not under the influence of liquor on this trip.

Q. Had you seen Mrs. Just take a highball at any time when she was over on that vessel—whiskey?

A. I never have. Wait a minute. Now, don't smile sarcastically.

Q. It is my sanguine countenance. It is not a smile.

A. Don't smile sarcastically, and I will tell you; certainly not over two and probably just one.

Q. Tell me, Mr. McKay, when you arrived on the boat on Friday, you came in an automobile, did you not?

A. I imagine I did.

Q. And what luggage did you have?

A. I don't recall.

Q. Did you have any baggage besides a suitcase?

A. Not that I know of, my luggage was put on, you see, when I came over from the house in the morning; it was a soft airplane bag, I think it was; I don't know.

Q. You say that is all you had; did you have any packages of liquor?

A. No, why don't you ask me?

Q. I just asked you about packages and you seemed to be terribly upset.

108 A. I know very well I didn't.

Q. Mr. McKay, when you saw these girls down there, did you notice that their lips were blue?

A. I can't say that I did.

Q. Did you notice that the finger nails of either girl were blue?

A. No, I didn't notice.

Q. When I say the "lips were blue", I mean the corners?

A. No, I didn't. I probably did not notice details.

Q. What is that?

A. I say I probably did not notice details.

Re-Direct Examination.

By Mr. Mershon:

Q. At this time I will ask you to note, and with the Court's permission, I will ask you to write the respective names of Mrs. Just and Miss Grunow on these photographs, Exhibits 7 and 8, and say which of these respective bunks were occupied by Mrs. Just and Miss Grunow when you found them on that morning?

A. On the reverse side?

Q. No, on the bunk itself; right here. (Indicating.)

A. (Witness indicates on Photograph.)

Mr. Parmer:

On Exhibit 7 the witness writes the name "Mrs. Just", and on Exhibit 8, the witness writes the name "Miss Grunow." I will now ask you to indicate where their feet were; just write the word "feet".

(Witness complies.)

109 Q. Are the so-called bunks simply single iron beds with box springs and mattresses?

A. They are single; I won't be sure that they are iron, but they are single.

Q. Have you ever on occasions when you made trips with Mr. Yeiser, you and he alone, occupied that state room?

A. No, Mr. Yeiser and I never occupied it, I don't believe; I occupied it many times.

Q. On what occasions?

A. When I had been there alone, and when I wasn't there with other guests. I occupied the state room alone. I think I had three fellows with me that occupied it; all three of us occupied it.

Mr. Mershon:

With consent of opposing counsel, I mark on these respective photographs the words "starboard" and "port", the word "starboard" being on Exhibit 8, and the word "port" being on Exhibit "7", to indicate the respective sides of the yacht on which these bunks were located.

Q. Mr. McKay, was Mr. Yeiser mentally incapacitated?

A. No, I don't think so.

Q. What of him with respect to his mental ability, business training, etc?

A. Oh, he was one of the brightest men I ever knew; at 33, he was president and General Manager of Globe-Werneke Company in Cincinnati. He was one of the

brightest men in my section in the army, and I had good reason to know. He stood third in the section of 110 60, and used to go to bed at 9:30 every night. I stood near the bottom and I worked until twelve every night; he was a bright man.

Q. Did he retire then from business?

A. He retired from business.

Q. What experience, if any, had he had beyond aviator or automobile driver or engineer?

A. He was a balloon pilot; that required work in motors; he knew about that before; he was also a licensed airplane pilot.

Q. What, if anything, did he know about a boat?

A. He had made a study of boats; at the time of his death, he was taking a correspondence course so as to get master's papers; he had some first papers, or whatever they call them.

Q. Had he had any airplane accident which affected his limbs or nerves?

A. He had two or three smashes which had hurt his legs, and thereafter when he would drink, it would seem to affect his power of locomotion.

Q. Were his legs or his ability to use his legs affected by taking liquor before he would become drunk?

A. Yes, before he would become mentally bothered by it. Is that what you mean?

Q. Yes, that is what I mean; then it would affect his mind and it would affect his legs?

A. Greatly so.

Q. How would it affect his legs? Would he have difficulty in using them?

141 A. Yes, difficulty in walking; he would need support in walking, I would say to the extent like a fellow with locomotive—

Q. Locomotive ataxia?

A. Yes.

Q. Do you recall this morning when you saw the girls in their bunks and you could not wake them up, and you went up and found Mr. Yeiser by the wheel house?

A. Right.

Q. Did he walk back with you, and go down to the bunks?

A. He did.

Q. Did he have any difficulty in walking back with you and coming down the steps to the lower bunk and going to the bunks?

A. He did not.

Q. Was there any indication that he was intoxicated, drunk, or under the influence of liquor at that time?

A. Not at that time.

Q. Was there any indication of any kind that the girls were intoxicated or under the influence of liquor when you found them in their bunks, and when they were brought out on the deck?

A. No.

Q. Was that one of the things that you and Mr. Yeiser considered in determining that it was carbon monoxide poisoning?

Mr. Parmer:

I object to that, as leading.

112 Mr. Mershon:

This is cross examination—direct examination under the guise of cross examination, if your Honor please.

The Court:

I think that it is leading.

Mr. Mershon:

I will agree with your Honor that it is subject to that objection. I will reframe it.

Q. Did you or Mr. Yeiser in discussing what was the matter with the girls consider any possibility other than carbon monoxide gas?

Mr. Parmier:

I object to that as beyond the ken of this witness, what Mr. Yeiser considered.

The Court:

Well, the purport of the question is what was considered by Mr. Yeiser and has reference to the conversation between the witness and Mr. Yeiser. Ask him what was taken into consideration in their conversation.

Q. Will you answer that question of the Court.

A. We deducted that it must be carbon monoxide. I said that—my thought was that it was simply insufficient fresh air, then after talking with Mr. Yeiser, carbon monoxide was in both of our minds.

Q. Did either you or Mr. Yeiser suggest that the girls were under the influence of liquor?

A. We did not.

Mr. Parmier:

I object to that, your Honor; it is leading.

The Court:

Well some questions necessarily border on being leading; the objection is overruled.

A. We did not, and there was no reason for it.

113 Q. And while you were out fishing with the young ladies, did you and Mrs. Just go in one boat and Mr. Yeiser and Miss Grunow go in another boat, or did you all go together?

A. We all went together part of the time and we went in separate boats part of the time; Mrs. Just and I went

once, and I think Miss Grunow and I went over one morning on the bank and fished.

Q. When you split up like that, state whether or not somebody else was along?

A. There was always someone else along. Captain Roberts usually took one of the fishing boats, and another fishing guide took another; if he wasn't there, Chief Blount would take it, and a sailor usually would go along with one of us.

Q. I believe you stated that on this Sunday afternoon, that Mrs. Just and probably Miss Grunow, both, were a little seasick?

A. Yes.

Q. While they were out in the small boats?

A. Yes, it was quite rough; there wasn't any use putting it through it, so we turned around and came in.

Q. Did they completely recover from that before dinner?

A. Absolutely.

Q. Now, Mr. McKay, when did Mr. Yeiser start drinking, which resulted, in about three days, in his death, do you know?

A. The Monday that we returned.

Q. Was that before or after you got into port?

A. After we got into port.

114 Q. Do you know from anything he said or did, what caused it?

A. I don't know.

Mr. Parmer:

I object to that, insofar as it includes what he said.

Mr. Mershon:

From what Mr. Yeiser said or did.

The Court:

Objection is made to that?

Mr. Parmer:

Insofar as in includes the words what Mr. Yeiser said.

The Court:

The objection to the question is well taken.

Q. Do you know why Mr. Yeiser started drinking after this accident which ended in his death, if so, please state.

Mr. Parmer:

I object to that, but I would have no objection to a question which asked Mr. McKay whether anything was done by Mr. Yeiser which would indicate why.

The Court:

Read the question.

(Thereupon the preceding question was read by the reporter as above recorded.)

A. I would have to preface anything I said by what he told me or I assumed.

The Court:

Allright, that is objectionable; that has been ruled upon by the Court. Apparently, he can not answer the question.

Q. Did Mr. Yeiser show any signs of distress over this accident?

A. He did.

Q. What did he do?

115 A. He talked about it incessantly; he said many times how sorry he was. He appeared nervous, and later started drinking.

Mr. Mershon:

That is all.

The Court:

Well, it is about time for us to conclude for the day. Mr. McKay is the witness, and he can come back in the morning. We will adjourn until 10 o'clock tomorrow morning.

October 6th, 1937. 10 o'clock a. m.

Morning session.

The Court:

Did you complete your examination, Mr. Mershon?

Mr. Mershon:

I want to ask Mr. McKay two or three other questions, if your Honor please.

JOHN G. MCKAY a witness on behalf of Claimants, being recalled, and being still under oath, further testified as follows:

Re-Direct Examination (Continued)

By Mr. Mershon:

Q. Mr. McKay, after Mr. Yeiser's death did you as counsel, or did your firm represent his Estate?

A. Yes, we did in some matters.

Q. Did you represent it in connection with the sale or disposition of the yacht Friendship II which was in this Estate?

A. No, we did not.

Q. You were asked on cross examination whether your practice and that of your Firm consists largely in defending negligence cases, and I believe you said it did?

A. Yes, quite largely.

116 Q. Is that what is generally known as insurance practice, where you represent companies which offer defenses for their assureds?

A. We represent the Companies who offer defenses for their assureds who carry liability insurance.

Q. Mr. McKay, on your cross examination you were asked numerous questions of a very personal nature, and at which time you requested the Court for permission to make a statement of explanation regarding your friendship and relationship with Mr. Yeiser and also with these claimants, Mrs. Just and Miss Grunow, which explanation counsel for the petitioner here said was not necessary in response to his question. Do you now wish to make a further or supplementary statement on that subject?

A. I would like to. May it please the Court, in regard to Mr. Yeiser, I had known Mr. Yeiser, as it came out in the testimony here, for some 20 years. We were the closest of friends; he was a gentleman at all times. He did drink too much, and when he drank too much he was not himself. Other friends of his and myself spent a good deal of time in trying to get him back so he would be himself all of the time. He came down here and his friends in Cincinnati looked to me—I have files of correspondence from his friends and from his family about attempts made to get him so he would not drink. He seemed to

117 like to have me go with him on various trips on this boat. I went numerous times. At no time did I ever take a drink on the boat with him or take a drink in his presence. I protested against it. He did on a few occasions take drinks in my presence, but very seldom, and I therefore thought it was a good thing—if I could spare the time on a week-end, to take trips with him, because he was delightful company and we had a lot of fun "bulling" over old wartimes. That was the reason for the trips in general.

Any reflection on Mr. Yeiser about asking me to procure women for him goes out as a matter of course, or that I would hope would go out as a matter of course.

There has been an attempt made here to besmirch the character of very good friends of mine, Mrs. Just and Miss Grunow. I know Mrs. Just and have known her for almost three years; I know her family, her mother, her aunt and her grandmother, and I know friends of theirs in St. Louis; they are among one of the finest old German families in St. Louis. There are a great many people who come down here from St. Louis that I have known for 9 or 10 or 12 years, and I found that they all knew Mrs. Just and her family, and they say she is of a fine family. On the other hand, Mrs. Just down here always conducted herself perfectly, as a perfect lady; she was careful in her conduct. As far as drinking is concerned, I have been on parties with her and dinners, with many people present, and many times there were invitations from her

118 friends or invitations from my friends, yet I have never seen her under the influence of liquor. I was introduced to her by Mr. Mayne here, about whom you know something. Miss Grunow I did not know as well. She came here on a trip for three or four weeks and she was a friend of Mrs. Just and she conducted herself just as well as Mrs. Just when here.

In view of these attempts to besmirch the character of my friends, I felt that I had to speak to the Court about it.

Q. Then, I understand, Mr. McKay, that your association with these ladies was not solely on the trips that were taken on this boat or any other boat?

A. Far from it.

Q. And the trips that were taken on the boat by you and by these ladies were at Mr. Yeiser's invitation as an invitation to his friends and your friends to share his hospitality?

A. Right.

Mr. Mershon:

That is all.

Re-Cross Examination.

By Mr. Parmer:

Q. Well, now, Mr. McKay, when this boat came into Miami, after the trip, did you tie up at the Royal Palm Dock?

A. Yes.

Q. Do you know where the Jackson-Memorial Hospital is in relation to the Royal Palm Dock?

A. Yes, sure.

119 Q. How far away?

A. I would say about ten to twelve miles.

Q. Wasn't it at your suggestion, Mr. McKay, that Mrs. Just was taken to the St. Francis Hospital?

A. Yes, I think it was.

Q. Well, do you remember that it was.

A. I won't be sure but I think it was at my suggestion, because it was right near her home on the Beach, which would be more convenient for her family.

Q. As a matter of fact, didn't you say to Dr. Howell that you wanted Mrs. Just taken to the St. Francis Hospital because if she was taken to the Jackson-Memorial Hospital, the newspapers might get hold of it and make it nasty for the girls and their families?

A. I don't think so.

Q. Will you deny that you said that to Dr. Howell?

A. I am quite certain that I didn't.

Q. You remember that Dr. Howell had protested—

A. May I make a suggestion?

Q. Very well, if you had not finished.

A. I had not finished.

Q. Allright.

A. We all know that newspaper notoriety about people being overcome by monoxide is something no one would

want. I have no great influence at St. Francis, and I have none at Jackson-Memorial. I can not imagine myself making such a statement.

120 Q. Do you remember that Dr. Howell wanted to take them to the Jackson Memorial Hospital because that was the hospital he ordinarily used?

A. No, I don't.

Q. And that he protested—

A. I don't remember that, but I can easily imagine that I might have insisted that Mrs. Just be taken to the St. Francis Hospital because it was just two or three blocks from where she was living on the beach and where her family were.

Q. Do you say that you were aware that under the circumstances like these, that the press might get hold of the case and make it nasty for the family?

A. Certainly.

Q. Do you think that you did not express yourself that way at the time, to Dr. Howell?

A. I don't recall; I may have, but I don't recall.

Q. Then you think that you might have expressed yourself to him then?

A. Yes.

Q. Well, was it your idea that the press might make something nasty of just carbon monoxide gas?

A. I thought they might.

Q. Well, were you conscious of any circumstances which would afford them the foundation for something nasty?

A. No.

121 Q. But you perceived that they would, under the circumstances, get something, by reason of which they might print something that was nasty, but untrue?

A. Yes.

Q. In other words, you were not at all deceived by appearances yourself, that is the appearance might be against you?

A. I suppose that is what I had in mind.

Q. Is that true?

A. I suppose so.

Q. But your position is, and was at the time, I take it, that you wished to avoid the press making something untrue, although it might appear otherwise?

A. I suppose that is true.

Re-Direct Examination.

By Mr. Mershon:

Q. Mr. McKay, the St. Francis Hospital is a fine, large, well equipped institution at Miami Beach, is it not?

A. I understand it is the finest equipped hospital in the area.

Q. Were you as familiar with the facilities of the Jackson-Memorial Hospital as you were, of the St. Francis Hospital?

A. No, I had been to St. Francis oftener.

Q. If you were to make a decision today for your family or your friends, for hospital care, would you hesitate to make the same decision, from your own personal standpoint, that you made for Mrs. Just at that time?

Q. If I had a sister who lived in Coral Gables and was taking her to a hospital, I would suggest and insist that she go to the St. Francis Hospital.

122

Re-Cross Examination.

By Mr. Parmer:

Q. Well at that time did you know much about the Jackson-Memorial Hospital?

A. I knew something about it, yes.

Q. Did you know anything about it by reason of which you would not recommend it for the treatment of such an illness as you thought Mrs. Just had?

A. No, I wouldn't recommend it, if there was something better to recommend.

Q. Perhaps you can tell me—I don't want to interrupt if you haven't finished—

A. Unless there was some other place I thought would give a little better treatment.

Q. Tell me if I am wrong. Isn't the Jackson-Memorial Hospital one of the very leading hospitals in the south?

A. Well probably one of the leading. The equipment at the St. Francis, you may or may not know—

Q. I don't—

A. —This hospital was equipped by Mr. Allison, and he gave instructions that absolutely no expense be spared in equipping it; it was not organized and has not been operating as a profit institution, and the equipment in the

St. Francis is about the best possible to obtain
123 in the world.

Q. How did you learn of that?

A. I represented Mr. Allison, as counsel for him, right after he made the arrangement for the hospital; I wasn't here when he made the arrangement.

Q. But you represented him?

A. Yes.

Q. Then you are familiar with that hospital?

A. That is right; after that time, Mr. Allison died and because of collateral representation, I did not represent all of his Estate. I am not at all familiar with the arrangements—not at all familiar, but I know something about the arrangement under which the hospital was turned over to the Order of St. Francis.

Q. You have a far less knowledge with regard to the Jackson Memorial Hospital?

A. Oh surely.

Q. If it were your idea to keep from the press knowledge with regard to the circumstances under which Mrs. Just was removed from the vessel, you would have a

greater opportunity of doing it in the St. Francis then you would have had in the Jackson-Memorial, is that so?

A. If it were important?

Q. Of course.

A. If it were the chief thing; the chief thing was to get her well under the best condition we could get her well, and where she could be near and be visited by her family.

Q. Was it at all your idea to get her to the
124 hospital as fast as possible?

A. Oh yes.

Q. Although the St. Francis was ten miles away and the other hospital five miles away, yet there were other circumstances which countermanded the necessity for speed?

A. No, there wasn't ten minutes difference in the time to get to the St. Francis from there, and there had been several hours elapsed, and the doctor said there was no great hurry but she should go to a hospital.

Q. There was no necessity for speed, then I take it, since the doctor said "no hurry"?

A. No necessity for speed to save ten minutes when there was a better place to go.

Mr. Mershon:

That is all. Would the Court like to interrogate the witness?

The Court:

The Court hesitates about questioning witnesses in the early stages of the trial; counsel know their case, but I am going to suggest two phases of inquiry I would like to have developed. It is perfectly agreeable to the Court if counsel would develop them. The first is: Whether there was any odor or any foreign substance in the state-room when Mr. McKay first found the ladies, and along that line whether any investigation was made by him to explain the presence of any odor or any foreign gas or

125 substance, if it was found. In the second place, whether in his talk with Mr. Yeiser in regard to the condition of the ladies, whether any facts were investigated besides their opinion—as to whether there was anything that developed in the way of facts during the ten or fifteen minutes that elapsed before the boat tied up at the dock.

Mr. Mershon:

If your Honor please, I will undertake to interrogate Mr. McKay along those lines.

The Court:

All right.

(By Mr. Mershon):

Q. Mr. McKay, when you went in the stateroom on the morning in question and found the ladies unconscious in their bunks, was there any odor of alcohol there?

A. There was not.

Q. Did you notice any peculiar or unusual odor?

A. I did not.

Q. Did you see any evidence of alcoholic liquors of any kind, either in glasses remaining about the state room, or in bottles?

A. I did not.

Mr. Mershon:

Just at this point, I will state to the Court that it will be shown, and I think counsel will concede, that carbon monoxide gas is colorless, and generally regarded as an odorless substance.

The Court:

That I do not know.

Mr. Parmer:

Yes, I will concede that carbon monoxide gas is as Mr. Mershon says, but the fumes from a motor in which it is contained in a minor quantity, are not colorless.
 126 I hope I have not said enough to bring forth an answer which will void what I have said, because that is part of our case; fumes from a motor can be seen.

Mr. Mershon:

In view of counsel's statement, and regardless of what he understands, Mr. McKay will tell the truth as he knows it and recalls it, and I think we owe the duty to the Court to have him state whether he saw any smoke or anything unusual in the stateroom.

A. I did not. In fact Mr. Yeiser and I sniffed to see if there was; to see if we could notice any odor, and we did not.

The Court:

In the state room?

A. In the state room.

The Court:

When was that? Before the ladies were removed to the deck?

A. Before they were removed to the deck, and up to that time you see I had opened the windows of the state room.

Q. Mr. McKay, prior to that time you had opened the windows on each side of the state room?

A. Yes.

Q. Before Mr. Yeiser came down?

A. Before he came down; that was the first thing I did.

Q. Did you also leave open the door from the state room, opening out into the hallway?

A. Yes, I did.

Q. I believe you stated your first impression
127 when you got down to the ladies, was they had
been sleeping with the windows closed and the
door closed, and perhaps they had not had sufficient supply
of oxygen?

A. Right.

Q. Now state if you can recall any statements or discussion by Mr. Yeiser of facts which he might already have known concerning the condition of the boat and its motors, or otherwise, which would make the possibility of carbon monoxide gas having affected these ladies?

A. I do not recall that he stated any facts on which he based his conclusion that it was carbon monoxide gas but I do recall—

Mr. Parmer:

Your Honor, I think that the answer so far given answers what your Honor was interested in, in regard to the facts and I am fearful that Mr. McKay wishes to make a statement not relating to facts, and if he wishes to go outside of the facts, I will necessarily object.

Q. Stop your answer at that point, Mr. McKay, and I will ask you another question. Did you and Mr. Yeiser make an investigation to try to ascertain whether there was any other possible basis for this condition the ladies were found in, such as sniffing and looking for liquor?

A. We did not look for liquor; we knew there wasn't any; we sniffed and that is the only investigation we made.

Q. Were you both aware of the total absence of any alcoholic fumes or smell of alcohol?

128 A. We were.

Mr. Mershon:

If your Honor please, it is entirely agreeable to us to have the Court ask any question he may have in his

mind. Counsel here is fearful that we may violate the rules of evidence, and I feel a certain hesitancy about going further, although I could do it.

The Court:

I think you have covered it sufficient to meet the suggestion of the Court. Mr. McKay is right here, and if we desire to recall Mr. McKay, we can do it.

Mr. Parmer:

May I ask Mr. McKay just one question?

The Court:

Yes.

(By Mr. Parmer):

Q. Mr. McKay, there was a certain period during which you were in the room before the windows were opened?

A. Yes.

Q. How long was that?

A. I would say two or three minutes.

Q. Two or three minutes?

A. Yes.

Q. And during that time, was the door closed too?

A. No, the door was open.

Q. The door was open?

A. Yes.

Mr. Parmer:

That is all.

129 Mr. Mershon:

It is stipulated by counsel for the respective parties that the series of papers consisting of 12 sheets which have been marked for identification as Claimant's Exhibit 9, partly printed, partly typewritten, and partly handwriting, constitutes the original and complete hospital

record of St. Francis Hospital of Miami Beach, Florida, of the occupancy of Mrs. Charlotte Just as a patient in that hospital from and including March 2nd, 1936, to and including March 7, 1936, and of the hospital and medical treatment of the said patient, Mrs. Charlotte Just.

Mr. Parmer:

That is alright; we agree to that.

Mr. Mershon:

And that said record was made and kept in conformity with a statute requiring such a record to be kept.

Mr. Parmer:

That is alright, but by that we do not mean to imply or say that it was intended to be kept in conformity with any statutory requirement.

Mr. Mershon:

That is alright. And that all writing purporting to be signed by Dr. Spencer Howell or R. Spencer Howell, bearing his initials, is in the handwriting of the said Dr. R. Spencer Howell.

Mr. Parmer:

I will also state that Spencer Howell used "S. H." to identify some of his notes instead of his full name.

Mr. Mershon:

It is further stipulated that the initials "R. H." refer to Dr. R. M. Harris.

Mr. Parmer:

We will stipulate that. I suppose it is right.

130 DON RODERICK was called as a witness in behalf of claimants and, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Mershon:

Q. Your name is Don Roderick?

A. Yes, sir.

Q. Where do you live, Mr. Roderick?

A. 57 Melrose Drive, Miami Springs.

Q. How long have you lived in Dade County?

A. Dade County?

Q. Yes.

A. At least six years.

Q. What is your business?

A. At present I am a Diesel Engineer aboard a yacht.

Q. What experience have you had with yachts and their motors and equipment?

A. My boating experience started in 1923 or 1924.

Q. Are you a mechanic?

A. Yes, sir, and a licensed Diesel Engineer.

Q. Are you familiar with the houseboat Friendship II?

A. To the extent that I did some work on it; I never made any trips or anything like that on it, and never ran it.

Q. Do you know Captain Frederick Roberts who was the Captain of that yacht?

A. Very well.

Q. Do you know Engineer Carl Blount?

131 A. Yes, very well—since 1925.

Q. Were you called to examine the engines and exhaust pipes of the Friendship II sometime in March, 1936?

A. Mr. Mershon, that is not exactly right.

Q. You state it.

A. I was called to make an estimate on installing new pipes in that boat.

Q. What date was it that you first went aboard to examine and figure on installing some pipes?

A. Judging from the records probably the 2nd of March.

Q. What did you do there on the second of March?

A. Well, Mr. Roberts and I went over the boat with a rule and tried to estimate in some manner how the exhaust could be run out of the stack of the boat without too much carpenter work and tearing up of the upper deck-house, and without making too many bends and elbows and too much complication, and we found that it would be a very difficult job without disturbing the entire deck-house and the arrangements there.

Q. How were the exhaust pipes arranged at that time?

A. They went under the floor; they went under the floor—

Q. How many exhaust pipes were there?

A. Two.

Q. One running each side of the center of the boat?

A. Yes.

Q. From the engine?

A. To the stern back.

Q. Did the exhaust pipe run under the bilges
132 of the staterooms and the dining rooms?

A. Yes.

Q. That is what is known as the bilge of the boat?

A. Yes.

Q. All right. Did you have occasion to examine the exhaust pipes?

A. At Mr. Roberts' suggestion; why he suggested that Carl (Blount) and I look over the present exhaust pipe system and see if we could discover anything wrong with it outside of the patch that the engineer had put on the pipe.

Q. When you say "Carl" you mean Mr. Blunt, the Chief Engineer on the Friendship II?

A. Yes, sir.

Q. Did you make that examination with him?

A. We went in the after-stateroom and took up the carpet on the floor and the hatches; the floor was loosely laid and they had these hatches there for the purpose of examining and cleaning and so forth, and we looked in as far as we could see; in fact, the under structure of this boat is not divided at all by any bulkheads or partitions; from the front of the boat to the aft and clear through to the engine room there is no bulkheads or partitions of any sort, and with a flashlight we could stick our heads down through the floor there and we could see clear up to the light that was in the engine room. There was no noticeable leak or apparent place where it had been leaking, and so Mr. Blount started the starboard engine first, I believe, and with a flashlight I looked forward and could
133 see clear to the engine in the engine-room, could see clear the whole length of the exhaust pipe, and there was no sign of any leak whatsoever. Then he came back while it was running and I told him that it was Okay, and then he went up and started the port engine, and of course the moment he started the port engine why this hole in the exhaust pipe showed up. We could see the water and gas and stuff coming out of this hole; was up towards the front somewhere. Then we started in the dining-salon and worked back, taking up the carpets and floors, and as we went along we found where the hole was.

Q. How many holes did you find?

A. Just the one.

Q. Where was that hole in the exhaust pipe from which the water and gas was spouting when the port engine was running?

A. If I recall right, it was under the port stateroom in the forward corner; I don't remember the exact arrangement of the boat, but I think it was in the forward corner of the port stateroom.

Q. Do you recognize this picture, exhibit 7, as being the double stateroom on the lower deck of the Friendship II?

A. Yes, that is the after-stateroom.

Q. That is a double stateroom, is it not?

A. Yes, I can see where that might be.

Q. Now where with reference to this port side of the stateroom shown on this picture, Exhibit 7, did you find this leak?

A. Well, there is a hallway I believe going down straight forward from this room and down this
134 hallway on the port side of the boat in another stateroom, and it was under the floor of that stateroom where the leak was found; it wasn't under the after stateroom at all.

Q. Was the leak near the wall which divides this double stateroom from the port stateroom which you are talking about?

A. My recollection does not cover the exact plan of the boat. If you have a plan of the boat I could be sure.

Q. I am sorry I do not have it.

A. It was near a wall I am sure; I remember that because I worked under something there close to a wall of some kind.

Q. Do you recall which hatch you went down or lifted in order to get to the leak; was it the main hall hatch in the bathroom—

A. I don't believe it was this (indicating) compartment at all.

Mr. Parmer:

You are referring to this form which is being used?

A. It was in the bedroom forward.

Mr. Parmer:

That is exhibit what?

Mr. Mershon:

Seven.

Q. Now, Mr. Roderick, if you will step over here I will ask you to look at these exhaust pipes. I refer to the copper pipes, Claimants' Exhibits 2 to 6, inclusive, and I will ask you if you recognize those as being the port exhaust pipes taken out of the Friendship II?

A. Yes, it is easy to see they are, yes.

Q. I refer particularly to that section of the pipe which is identified as Claimants' Exhibit No. 6,
135 and I call your attention to a composition rubber patch fastened around the pipe about two and a half feet from one end of it, and I will ask you if you placed that patch on that pipe?

A. If this pipe came out of the Friendship II I undoubtedly put that patch on there.

Q. Does that look like that patch?

A. Yes.

Q. You did place a patch on the port exhaust pipe in that position on the yacht Friendship II?

A. Yes, sir.

Q. When did you actually put the patch on?

A. March 2nd.

Q. That would be March 2, 1936?

A. Yes, sir.

Q. I call your attention to another rubber composition patch around the pipe, Claimants' Exhibit 6, and will ask you if you also put that patch on there?

A. Undoubtedly there were two.

Q. There were two holes in that exhaust pipe?

A. If there is any mark on that pipe to tell exactly how it was arranged on the boat—

Q. For your information assume that this point, this first section, Exhibit 5, attached to the manifold exhaust that came from the engine, and the remaining section of pipe numbered 5 which is marked Exhibit 2, and at

tached to that is this other pipe, Exhibit 4, and beyond that is Exhibit 6, and beyond that the connected to that and coming out to the stern was this pipe, Exhibit 3,—

136 A. The hole which I noticed when Mr. Blount was running the engine was the after one of the two patches.

Q. That would be about four feet from one end of the pipe, Exhibit 6?

A. Yes, sir. Now I explained how we found that hole. We started in the dining-room—from the after end; and the point we were looking at was at a point about where this patch is here, and as we were looking back of this pipe and along this pipe we saw this water and stuff coming out.

Q. You were looking at a point about eight feet from where the pipe came out of the stern?

A. Yes.

Q. And you followed the pipe along forward up to the engine?

A. Yes, sir. We came to a place where we saw this water and stuff coming out; by that time we had the carpets and all the hatches were up the whole range of the boat, and of course we made a more minute examination then and from out of that hole there was flowing a considerable stream of water and gas.

Q. You are now referring to the hole about four feet from one end of the pipe, Exhibit 6?

A. Yes, sir.

Q. All right, now outside of that hole?

A. We found another place where there was a plug evidently.

Q. Was water and gas coming out of that?

A. It was leaking a drip like a faucet or something, maybe enough to fill a bucket in 24 hours.

Q. Was it enough for exhaust gas to escape?

137 A. No. In fact, I patched it because that is one way of foreseeing trouble. If we had not patched it then it would have undoubtedly caused trouble.

Q. Did you take off any of the asbestos to look for leaks other than that leak that spouted out when you first saw it?

A. No.

Q. This Friendship II had two engines in the motor room?

A. Yes.

Q. Port motor and starboard motor?

A. Yes.

Q. Each motor had its own separate exhaust pipe?

A. Yes.

Q. Could that boat operate under either or both of those motors?

A. Yes.

Q. I will ask you, with the Court's permission, in the presence of opposing counsel, to remove this patch from the hole which you say you discovered on March 2nd leaking water and gass.

A. (Witness complies).

Q. I call your attention to the hole in that exhaust pipe, Exhibit 6, immediately under the patch you have just removed, and I will ask you if that is about as it appeared that morning when you found it?

A. The hole you see is on the bottom of the pipe and I can't swear that I got my head far enough to look under it.

Q. Was there a stream of water about that size coming out of it?

A. Yes, more or less.

138 Q. Were you asked to put on a temporary patch?

A. Well, after discovering this hole of course we took it up with the Captain, as was the custom, and the Captain told us that he had no authority from the estate for buying

a new exhaust pipe, and that if I could make a patch and put on it why that would be the thing to do.

Q. Captain Roberts told you that he could not make any repairs without getting authority from the owners, is that right?

A. That is right.

Q. Did Captain Roberts make the observation that all of the pipes ought to be replaced at one time?

A. Well, yes, they were going to replace them in some way, and that was the reason why I came down there originally in the first place, to make an estimate on putting these new pipes out through the stack.

Q. Now I believe you said that underneath these staterooms and surrounding these exhaust pipes there were no partitions or anything in the bilge of the boat?

A. No, sir.

Q. Then when that gas came out of that exhaust pipe it was entirely open under the bilge there so that the gas could circulate under the staterooms, both forward and back from the leak?

A. Yes.

Q. Are you familiar enough with the construction of that boat to say whether it was open from the bilge up the sides of the boat between the outside walls of the staterooms and the inside walls of the staterooms?

139 A. I cannot say that I am with that particular boat.

Q. Are you familiar with house boats of that design?

A. Well, I am engineer on one now.

Q. How are those boats constructed with reference to ventilation from the bilge up between the inside and outside walls of the stateroom?

A. Well, along in the top, crosswise, there are slots to allow for ventilation over the bilge through the top.

Q. I call your attention to photographs, Exhibits 7 and 8, which show the aft or double stateroom in the Friendship II, and I call your attention particularly to some little

horizontal openings or vents in the side walls of the stateroom and ask, from your knowledge of these house boats, whether those are the vents you are talking about?

A. Yes.

Q. Based on your knowledge can air and gas or anything else of that nature which may be in the bilge of the boat come up through the sides and into the stateroom?

A. They are installed there for that purpose.

Q. I believe you say you are an engineer on a boat now?

A. Yes.

Q. When the motors are operating and the boat of this type is in motion, what effect, if any, does the moving of the boat against the wind cause in the circulation of current in the bilge? Does it create any circulation in the bilge of air?

A. That would be very difficult to say. I don't believe I have any experience along that line.

140 Q. You never had occasion to observe?

A. No, sir.

Q. Mr. Roderick, assuming that the Friendship II had the ventilators or openings from the bilge directly into the various staterooms through the vents as shown on these pictures, Exhibits 7 and 8, could the exhaust or gas which was escaping from the leak as you observed it have gotten through these vents into this after stateroom?

A. There is no reason why the gas in the bilge would not be able to go into the stateroom.

Mr. Mershon:

If your Honor please, I would like to have this witness take the patch off of this other hole in this exhaust pipe and explain to the Court what he did in connection with that, in order that we may at least dispose of it and know just what happened to it.

A. (Witness complies.)

Q. Mr. Roderick, you have removed the composition rubber patch over the hole in the exhaust pipe about 2-1/2 feet from the end of the pipe, Exhibit 6. I will ask you if where that hole is represents the place where you found a leaking plug on March 2, 1936?

A. Yes.

Q. Please explain why this hole is as large as it is and no plug is found there?

A. Well, the ordinary practice, ordinary good boating practice, in putting a plug into a pipe as thin as that is to build up with brass or copper a little lower, and
141 I remember knocking something off of here. The plug or this piece, or whatever it was, blow out here, and it was simply leaking around there, and I knocked on it to get a smooth place to put the patch on.

Q. That was originally a drain plug?

A. Yes, sir.

Q. Now I call your attention to some tape about 6 inches from the end of the pipe, Exhibit 5, and ask you if you placed that tape on there or had anything to do with it?

A. No, sir.

Q. Did you observe that tape and this copper moveable sleeve on that piece of pipe at the time you were making your inspection?

A. No, sir. To the best of my knowledge I didn't patch any part of that pipe at all; I just put these two patches on. Mr. Mershon, this represents the thing I have been talking about.

Q. The witness refers to a small cock on the pipe, Exhibit 2?

A. You see how this metal is solid here on the copper exhaust pipe (indicating). In the case of brazing or burning composition on this pipe here (indicating) it would in turn be like an electrolysis operating on that other metal and would eat this thing off, and in that case this whole thing would drop off, leaving a hole probably about

maybe 1 1/4", about the size of that small hole. You can just about see it, and that is what I suspect happened to both of these two holes.

Q. For the purpose of the record, could you
142 estimate to the best of your recollection about the size of the hole that was around the plug that you knocked out?

Mr. Parmer:

You mean the one that he knocked out on exhibit 6?

Mr. Mershon:

Yes.

A. The one that was already leaking or the one knocked out?

Q. The one you knocked out.

A. That would be about 1 1/4 inches, maybe a little more.

Mr. Mershon:

If your Honor please, I have not had an opportunity, nor have counsel for Petitioners, to see what is under this tape on Exhibit 5, and with the Court's permission we would like to unwrap that in the presence of the Court and see what it presents as bearing upon the condition of the pipe.

Mr. Parmer:

I have no objection, and I have not seen it myself, but so far as bearing on the case I do not see what it has to do with it.

The Court:

If it is on that theory, it will not be considered, but with this explanation it is all right.

Mr. Mershon:

Counsel for complainants proceeds to unwrap some tape from the pipe, and we ask that this tape which was gotten from the pipe be filed in evidence separately as Claimants' Ex. 5-A.

Mr. Parmer:

All right.

Q. Now, Mr. Roderick, I call your attention to a small hole in the exhaust pipe, Exhibit 5, which was found under that tape when it was removed. Please examine the tape and the pipe and state whether in your opinion as that tape was applied over that hole, it was possible for exhaust gas to leak through that hole?

Mr. Parmer:

You have in mind the condition of the tape as it is today?

Mr. Mershon:

Yes, just as it was taken off the pipe, the fact that it was not binding against the pipe where it went over the hole.

Mr. Parmer:

I object to that. There is no foundation laid here for that.

Mr. Mershon:

He is an expert.

Mr. Mershon:

We will withdraw the question.

Q. You say that at the time you made this examination you didn't notice this tape on this pipe (indicating)?

A. No, sir. This tape on this pipe here would be practically in the engine room. The position of that pipe would be about like this (indicating). You will probably find another hole here where the exhaust pipe hits that elbow and comes out at the stern.

Mr. Mershon:

Now, with the Court's permission, we would like to have the wrapping of tape removed from this piece of pipe, Exhibit I.

The Court:

That comes from the starboard side?

Mr. Mershon:

Yes.

Mr. Parmer:

All right.

Mr. Mershon:

I call the Court's attention and counsel's attention to the fact that this tape, as to its condition here, is broken and worn through and has a hole completely
144 through it directly over or adjacent to the holes which are found on that piece of pipe, Exhibit I.

At this time, if your Honor please, these exhaust pipes having been identified, we offer them in evidence, and ask that they be marked Complainants' Exhibits 1 to 6, respectively.

Mr. Parmer:

So far as these pipes may be offered to show some condition obtaining a long time after the so-called accident

happened, I must object to their admission. I do recognize that some of the evidence covers the condition of the pipes as they were at the time, particularly, if your Honor please, Mr. Roderick's evidence with regard to Exhibit 6, and the holes with which he dealt; as far as that is concerned I have no objection.

The Court:

I think there is sufficient identification of the pipes. The objection is overruled and they will be admitted in evidence.

Thereupon the six pieces of pipe above referred to were marked Claimants' Exhibits 1 to 6, inclusive.

Mr. Mershon:

For the purposes of the record, we call the attention of the Court to this piece of pipe, Exhibit I, and to the fact that there appears in the pipe itself, on the outside of the bend, a hole approximately $7/8$ inches long and varying in width from $1/4$ inch to $3/8$ inch. I call attention to Exhibit No. 5 in which there are other small holes, circular in shape and ranging from $1/16$ to $1/8$ inch in diameter.

145 (By Mr. Mershon):

Q. I call your attention to the tape attached on the piece of pipe, Exhibit I, and ask you whether in your opinion as an expert that is a sufficient and safe repair to the holes in that pipe.

Mr. Farmer:

I object to that.

Mr. Mershon:

It has been shown that the pipes have not been changed, that the pipes are in the same condition as they came off the boat.

Mr. Parmer:

They came off the boat a long time after the accident.

Mr. Mershon:

We will connect it up later; if not, you can move to strike.

The Court:

All right; the objection is overruled.

Q. Taking into consideration the holes as they appear now and the tape as it now appears—

Mr. Parmer:

You disturbed that when you ran a screw driver through it, didn't you? You are taking liberty with it. The first time I noticed the hole was when you put the screw driver through.

Mr. Mershon:

Does that look like a new hole to you?

Mr. Parmer:

I don't know.

Mr. Mershon:

Just say whether it looks like a new hole or whether it has just been punched there with a screw driver.

Mr. Parmer:

It does not look exactly new.

A. From an engineering standpoint, Mr. Mershon, I would say no, but when an engineer on a boat of any sort is forced by necessity to make repairs he uses anything at hand to get by with temporarily.

Q. And that patch is purely a temporary patch?

A. Yes.

Q. What would you call a temporary patch?

A. Until such time as the owners of the boat—and owners are usually peculiar people—some times they will spend a lot of money on something and they won't spend anything on something else, and an engineer might have extreme difficulty in getting an owner to consider necessary repairs, whereas something unnecessary he might get easily. In other words, it is temporary until such time as the owner of whoever is in charge thinks the repairs are absolutely necessary, to make a permanent repair or put in new pipe.

Q. You regard the condition of that pipe as so defective that it could not be used except by continuous temporary repair?

A. Yes.

Mr. Mershon:

You may examine.

Cross Examination.

By Mr. Parmer:

Q. When you say "continuous temporary repairs" would be necessary to keep this particular thing from leaking, that is, the holes which you say was in Exhibit I, have you any idea how long such a tape patch will last before it becomes necessary to put on another?

A. Well, not exactly. This stuff is out in salt
147 water and—The tape on there might stop leaking to-day and to-morrow you would have to put more on that; you can see that this is rotten, that this tape is now; of course you will notice this up here; hot and salt water coming out of this copper pipe—it would not take very long to rot it. It would be perfectly all right except when it is exposed to the same heat and pressure here (indicating); it is bound to be ruined.

Q. We will say in actual service on board a boat, how long can a thing like this continue to serve efficiently in keeping the pipe from leaking?

A. By putting on tape all the time you could keep it going indefinitely; by putting on new tape on top.

Q. Does this show evidence of having had successive layers of tape on it?

A. That is hard to say. There are about eight or ten layers of tape across the center part of that patch.

Q. This particular patch is right in the engine room?

A. Yes.

Q. That is where the engineer stays when he works?

A. Yes.

Q. And that is right in front of his eyes?

A. Yes.

Q. When he looks in that direction?

A. Yes.

Q. You are talking about Exhibit I?

A. Yes.

Q. If he looks along the pipe he can see it?

148 A. Yes.

Q. And that is the way he can tell whether it is leaking?

A. The salt on the outside of the pipe, the salt water sea will show a wet place.

Q. What did you say about salt water?

A. Well, this wet deposit on this pipe would show signs of salt water coming into it from some direction. It might not be on the pipe from the sea; it might be from the pump.

Q. Didn't you say just the opposite, that you didn't know that it leaked there, or it may have been salt on the pipe?

A. It would not show wet on the inside.

Q. Would it show on the next layer below?

A. It might. It might come through this hole.

Q. On the inside layer you didn't see any evidence of leaks there?

A. No, not at this point.

Q. And none at the point where you saw the water which you thought might be salt water which came all the way through? Would you withdraw the suggestion that this white on the outside came from a leak of salt water?

A. Well, yes.

Q. Do you wish to make an observation after I have opened it up?

A. No, sir.

Q. If there had been a hole in the tape you would expect to find some evidence on it of the nature of salt water leaking in some of the inside layers?

A. I should think so.

Q. You didn't find any at all; is that right?

149 A. Yes. The salt might have come through the hole that is in the tape.

Q. All right. We will go over that again. Do I understand you correctly that if the salt water came from the holes in the pipe and such salt water was responsible for this white deposit which you see on the outside, would you expect to find some evidence of that in some of the in between layers of this tape, and especially around the hole?

A. Yes.

Q. You didn't find any such evidence in the inside layers of that tape?

A. No.

Q. In view of that are you prepared to withdraw your suggestion that the white deposit on the outside of the tape came from any salt water oozing from this pipe?

A. There is no evidence there to support it.

Q. Therefore you would be prepared to withdraw the suggestion which you originally made that such was the case?

A. Correct.

Q. Now this pipe was in the engine room where the engineer could see it?

A. Yes.

Q. If there was any gas coming out of this particular pipe, exhibit I, he is going to be the first one who is going to get hit with it, is that right, and in fact he is the only one going to get hit by it right there?

150 A. Yes, sir.

A. Yes, sir.

Q. And if there is any leaking of water from this pipe, he can see it?

A. Yes, sir.

Q. Assuming that he looks at it, of course?

A. Yes, sir.

Q. Mr. Roderick, I call your attention to this hole which is in Exhibit 6; it is the one just about two feet from one end of Exhibit 6 and was, I believe, the one from which you claim you knocked the plug?

A. Yes.

Q. Now that day when you were making your inspection you were looking for leaks, were you not?

A. Yes, sir.

Q. And what was this pipe used for in addition to carrying the exhaust gases?

A. Nothing in the world that I know of.

Q. Was not this what was called a water exhaust?

A. Yes, sir.

Q. All right, what water did these pipes carry?

A. Probably the entire circulation of the engine, in fact I am sure.

Q. It was the cooling system of the engine, the same as you have in an automobile; is that right?

A. Yes.

Q. And the way you discovered the leaking, that is the only thing you considered a leak, was by water coming out; is that right?

151

A. Yes.

Q. And the only place that you saw water coming out of the pipe, was at this place on Exhibit 6, which is about five feet from the end?

A. Yes, sir.

Q. Now at this point in Exhibit 6 where you knocked the plug out—

The Court:

Why don't you refer to this one as forward end and the other as the lower end of exhibit 6?

Mr. Parmer:

That is a good suggestion. We will call this the place at the forward end of exhibit 6.

A. All right.

Q. In what way did you determine that there was a leak there; in other words, I want to know what was the condition of the plug with reference to witness.

A. The condition of this plug here?

Q. Yes.

A. May I show you exactly the condition that I found? Here is some asbestos covered by means of crystallization of salt, salt crystallization, and it is on this space here, down here under the pipe, that by reason of the salt crystallization; and then under this (indicating) I knocked that small piece off, and salt seepage was around this end (indicating), or whatever you call it. I knocked a hole in it.

Q. When you say there was a seepage, do you mean that it was wet or that it was flowing?

A. No, just dripping. It was wet and it would drip, drip, drip, drip.

152 Q. Did you see that the water was flowing? I want to know whether you saw it flowing.

A. It was dripping.

Q. Can you give us the rate at which you saw it dripping?

A. I think I would estimate about a bucketful every twentyfour hours. Something like that.

Q. Are you good enough at that subject to make such an estimate?

A. Well, it was a very small drip.

Q. I note before that when Mr. Mershon asked you a direct question as to whether there was any leakage of gas at this place, you said "no". Do you still say that?

A. Yes, no visible leak.

Q. Tell me with regard to the other hole; you said there was gas there?

A. Yes.

Q. Could you see it?

A. In the form of steam, yes.

Q. When you say steam, do you mean steam or hot water?

A. Yes.

Q. What you saw in this other hole was some vapor from hot water?

A. Vapor and water.

Q. This part of the pipe is considerably lower than the engine; when the engine was running, it poured water in there all the time, but there was not enough pressure to push it out the stern.

Q. Now at this forward end of #6 there was no such condition of vapor?

153 A. No.

Q. You saw this wet plug with slowly moving flow?

A. Yes.

Q. You were looking all around?

A. Yes, sir.

Q. For leaks in this pipe?

A. Yes.

Q. From forward to aft?

A. Yes, sir, wanted to get them all.

Q. Did you continue forward from the point which I now point to at the forward end of Exhibit 6?

A. Yes.

Q. Did you continue forward to this exhaust, Exhibit 5, and also to the manifold on the port side?

A. Yes. The hole that was taped would be in the engine room. I mean this one here (indicating).

Q. This one here?

A. Yes, I imagine that was in the engine room.

Q. Maybe so, but what I want to know is did you continue to examine the exhaust pipe to the forward end?

A. Up as far as the bulkhead.

Q. And you didn't go any further?

A. No, sir; I thought it was back.

Q. You thought it was inside of the engine room?

A. I am pretty sure.

Q. And that was behind the bulkhead?

A. You understand the bilge continued into
154 the engine room and it was open. Where we were standing on the floor of course there was no forward partition. If we had the plans of that boat it would be more helpful in describing locations. We worked the full length of the pipe, feeling and looking as much as possible.

Q. You didn't go into the bilge at any time in order to examine those pipes?

A. No, just working from the floor.

Q. You didn't go into the bilge at any time in order to examine these pipes?

A. No, just worked from the floor.

Q. You didn't go into the engine room?

A. No, sir.

Q. Did you examine the pipes in the starboard side?

A. Yes.

Q. You didn't find any leaks at all?

A. Not at all.

Q. No seepage there?

A. That is correct.

Q. Did you examine the exhaust manifold?

A. No, sir.

Q. In port?

A. No.

Q. Or the starboard?

A. No, sir.

Q. In the engine room?

A. No, sir.

155 Q. Now that you are wrong about the location of this exhibit 5, that is with respect to its position being outside of the engine room in the bilge, and as a matter of fact it was wholly in the bilge outside the engine room, you know that whatever part of it that you did see there was no leak in it?

A. Yes.

Q. You do know that?

A. Yes.

Q. Now you were called upon primarily, as I understand it, to see if some way could be devised for putting these exhaust pipes up in the air and up through the stack?

A. Yes.

Q. Instead of in the bilges under the boat?

A. Yes, sir.

Q. Under the rooms, I mean.

A. Yes, sir.

Q. Was there some purpose to be accomplished in having the pipes go up through the stack rather than under the rooms?

A. Yes, in boats ordinarily they are made to exhaust through the sides, also some exhaust of course through the top. A boat having it out through the top requires it to exhaust and it goes through dry without the water and frequently in sailboats of that sort under certain wind conditions, the exhaust will blow in windows and make someone or all of the party and crew all sick, gives

them headaches or something like that, which is a condition that came to my experience on my first sea trip. It was on the Friendship I in 1926. We went out about sundown and there was a light breeze and the whole crew was sick. That boat exhausted through the side.

Q. The way to avoid that is to get them up in the air?

A. Up in the air.

Q. Now I show you these exhibits 7 and 8 and call your attention to these slots which are just under the ceiling of this double stateroom in the aft part of the boat. Now do those slots appear in all of the staterooms of the boat?

A. Yes, sir.

Q. Now if you have a condition in the bilge where there is an accumulation of motor gas there, including carbon monoxide gas, is there any reason why that won't go up the sides of the vessel and into all of the rooms above?

A. Not at all that I know of.

Q. Now was there in your opinion or experience any reason why such gases, if they existed below, would pick one particular room to the exclusion of all others?

Mr. Mershon:

We object to that question because he is not qualified for the expression of such an opinion. He has not laid a sufficient ground.

The Court:

I think sufficient has been laid for that. Objection is overruled.

A. No, sir.

Q. Now have you had personal experience of the effects of carbon monoxide gas?

A. Yes, sir.

157 Q. Will you tell us what experience you have had yourself?

A. It was in connection with a boat going up Long Island Sound in 1925, with three large engines in the engine room, all of which I was watching. One of these engines blew a what they call gasket, forcing the exhaust gas into the engine room. In making an effort to repair this leak, I apparently became gassed about 11 or 12 o'clock one day and didn't come to until 10 o'clock the next day in the Coast Guard Station. How much detail do you want on this thing?

Q. Well, I have certain points that I want to bring out. Have you any idea about how long you were in the place where you were subject to the fumes?

A. It may have been half an hour or even an hour in that engine room. We had gas masks in the engine room; I reached for one; I remember that the gas was coming in and I reached for it and that was the last thing that I knew. I dropped there on my face on the floor and they pulled me out of there.

Q. You don't know how long you laid on the floor after you passed out?

A. No. I should guess from the various statements that I heard that it was from half an hour to an hour.

Q. How long were you unconscious?

A. From 11 or 12 o'clock one day until 10 o'clock the next day. Almost 24 hours.

Q. You were absolutely out?

158 A. I didn't know anything at all.

Q. Did you have any after effects of that experience?

A. Not for the first thirty days.

Mr. Parmer:

That is all.

Re-Direct Examination.

By Mr. Mershon:

Q. Mr. Roderick, you are one man who can stand before his fellows and absolutely swear that exhaust gases from a boat can knock you out and if they don't get you soon they can kill you?

A. Yes, sir.

Q. Were you accused of being drunk?

A. No, there was no liquor about.

Q. When they found you that time they thought you were dead?

A. Yes, sir.

Q. Now, I would like to ask in your opinion if there was any reason why gases circulating in the bilge of the boat should not have gotten into that stateroom of the boat?

A. Yes, sir.

Q. If the other occupied staterooms had their windows open and these other staterooms were forward toward the engine, and if they were on the port side, is it not a fact that gases accumulating in the bilge would not stay in the other staterooms with the windows open as it would collect and stay in the master stateroom if the master stateroom windows were down and the door was closed; would not that have a lot to do with the accumulation of gas?

A. It would have a lot to do with it. You
159. would have difficulty in trying to assume the facts of the various kinds of drafts that you get on a boat, because you get some from the headway of the boat and you get some from the direction of the wind at the time, also certain drafts through the boat or vents, and it would be difficult to assume what the winds or drafts on a boat would do.

Q. But if the travel conditions were right, it would be entirely possible for such a draft to be in the bilge of that boat as to pick up the exhaust gases coming out of the

leak that you found and center them in and around this double aft stateroom, would it?

A. I imagine it could be forced back through there if you have enough pressure.

Q. If the conditions are right and draft came through the bilge—

A. Never saw bilges having that much draft.

Q. I am assuming that it is possible.

A. Yes, it is possible.

Q. Now we are talking about the engine room; is it not customary to have at least one electric fan in the engine room to keep the gases going or keep the gases clear?

A. Usually.

Q. Isn't a fan a part of the standard equipment of the engine room?

A. Yes, I have three in my engine room.

Q. Now let's explain a little more about the function of these exhaust pipes. Do you know the horse power of the motors in Friendship II?

160

A. I believe they are 125 H. P.

Q. Now they had a water cooling system?

A. Yes, sir.

Q. Which means that the motors draw sea water from the outside which circulates around the jacket of the motor and that vapor is carried with the exhaust of the motor back through forty feet of copper tube out through the end of that pipe?

A. Yes.

Q. The moisture comes out of the pipe and the water drains in and circulates and the gas exhausts from the motor?

A. Yes.

Q. Would the end of these exhaust pipes be under water or at the water level?

A. Not one under water.

Q. Now was there pressure on these pipes?

A. Considerable, yet I don't know the exact poundage, but it was quite considerable.

Q. Is that pressure aided by the fact that when the exhaust pipe runs aft from the motor it slants downward and then it comes out the stern of the boat and it rises slightly and goes up at the stern of the boat?

A.

Q. The pressure on these pipes when the motor was running was sufficient to discharge quite a bit of gas and vapor into the bilge of the boat?

A. Yes. He said he pumped the bilges out
161 once a week or every two weeks.

Q. What would you say would be the average for that?

A. That is about right.

Q. Did you pump the bilges if you have no leaks in your exhaust line?

A. Yes, just to make sure they are dry.

Q. Did he indicate there was considerable water in the bilges when he pumped?

A. No, he didn't; that was a peculiar thing about it.

Q. I was about to forget to ask you. Did you remove the asbestos from the exhaust pipe when you examined it?

A. I don't believe so.

Mr. Mershon:

While Mr. Roderick is here, I should like to strip that asbestos off and see if there are any other holes in there. We might use Mr. Roderick here as an expert in connection with that.

Mr. Parmer:

I have no objection.

Mr. Mershon:

Suppose we take just a moment and look at the pipe. Now the asbestos is being stripped or loosened from the section of pipe, Exhibit 6.

Mr. Parmer:

Mr. Roderick, will you tell us here some place that looks suspicious; I want you to point it out to us.

Witness:

Here is a big one right here.

162 Mr. Parmer:

Now do you suppose we can see that open so we can see how thick it is.

A. Yes.

Mr. Parmer:

May we have that place to which Mr. Roderick pointed on exhibit 6 marked with the letter "T"?

Witness:

Would you like to have me do that this afternoon?

Mr. Parmer:

I will withdraw the request.

Mr. Mershon:

The asbestos was stripped from the pipe, Exhibit 3, and around the section of the pipe from which the asbestos was stripped we found no leaks in said pipe.

The Court:

Now there are a couple of questions I would like to ask Mr. Roderick.

Mr. Roderick, when you put this patch at the forward end of exhibit 6 and there was some substance in that hole which you removed, was that a metal substance or what was the character of the substance that was in there which you removed?

The Witness:

It was a small place similar to this here on this exhibit (indicating).

The Court:

It was not a pet cock, was it?

Witness:

It might have been, or a plug, one or the other. It was some method of drainage.

The Court:

Some instrument for draining the pipe?

Witness:

Yes, similiar to this one here.

The Court:

That was leaking or oozing this dripping which you estimate to be a bucket a day?

Witness:

Yes, sir. It is my opinion, though I have no evidence to support it, that the aft hole was smaller, that it was simply something that sluffed off and made this hole (indicating).

163 The Court:

I am going to ask you about that. The hole at the lower end of exhibit 6, which you patched. Was that under the bottom side of the pipe and your inability to turn it prevented you from seeing it, or was it under water? You said that water was in the bilge at times.

Witness:

The hole was in the bottom of the pipe.

The Court:

And was it because the pipe was stationary and could not be turned over which prevented you seeing it?

Witness:

Yes.

The Court:

Did you take a flashlight to see it?

Witness:

A portable light.

The Court:

Did you actually see it with the aid of the portable light?

Witness:

I could not at all; I could feel it and tell.

The Court:

You felt it with your hand?

Witness:

I know that, but whether I actually saw it I don't know.

The Court:

Was there any water in the bilge at the time?

Witness:

There normally is some, but not an abnormal amount.

The Court:

So whatever water was in the bilge it did not interfere with the inspection of the place of collapse?

Witness:

Not at all.

The Court:

Well, now from a mechanical standpoint, when the exhaust from the engine is mixed with water used
164 in circulating system, is there any chemical reaction between the water and gas?

Witness:

I believe not; not that I ever heard of.

The Court:

So it is your opinion that when the water goes out through the end of the pipe, out into the sea, and also the exhaust, that they go out in the same condition as they enter the pipe?

Witness:

Yes.

The Court:

When the bilge is damp, is it necessary or customary to open up any of the floor boards and look in the bilge or does an engineer just automatically—

Witness:

99% of the time, no, unless you have some trouble with the pump and want to see what the pipe was doing. In your engine room you have a system of valves and in your bilge you have a system of pipes that run to various parts of the boat. When you start your bilge pump and you turn your valves on you can tell by the action of the pump whether it is pumping water or soaking it dry. Then you cut that section off and pump another section without leaving the engine room at all. You can always tell that way.

The Court:

What is the structural arrangement in the bilge between the exhaust pipe, the circulation system pipe and the

piece of machinery that connects the engine with the screw or propeller?

Witness:

Well, the way it lays there on the floor (indicating) pipes on Courtroom floor; the shaft, if I remember right, would be about here this far away from it and below it.

165 The Court:
How much below it?

Witness:

Probably 15 to 18 inches.

The Court:

Do you know the occasion for putting that pet cock in exhibit 5?

Witness:

Yes. The exhaust pipe you see is lower and it is there as a means to drain the water.

The Court:

Was that an after-thought after the original construction?

Witness:

No, that was a part of the original construction.

The Court:

That pet cock was probably a part of the original construction?

Witness:

Yes.

The Court:

Now, as I understand it, when you first went there the engine on the starboard side was started?

Witness:

Yes.

The Court:

And you had placed yourself in a position where you could see the entire length of the exhaust pipe up to the engine room where the pipe went into the engine room?

Witness:

Yes.

The Court:

And along that pipe you saw nothing irregular about it at all?

Witness:

No.

The Court:

And if in this exhibit here, Exhibit I, which is a part of the manifold from the starboard side, there was any leakage there this wrapping on it would have
166 been visible to your eye in the engine room?

Witness:

Yes.

The Court:

So when you made your observation from the starting of the engine, and observed the workings in the starboard side, there was nothing irregular at all?

Witness:

No, sir.

The Court:

From your observation after the engine was started on the port side you saw this leaking through this hole which you described at the upper or forward part of Exhibit 6 and you also saw the escape of water and gas from the hole at the lower end of the exhibit?

Witness:

With this slight difference, Judge; the slight leak in the forward hole was not discovered until a closer examination of the pipe was made. In other words I was back in the stateroom looking down the whole length of pipe and I could easily see this hole flowing out water; that was open, but I didn't see this smaller leak until a closer examination of the pipe.

The Court:

Then you removed whatever packing there was and put this patch on?

Witness:

Yes, I took a hammer and knocked it off and made a smooth place in the pipe for the patch.

The Court:

That is all.

Mr. Mershon:

Q. Was there any asbestos over this hole where you saw steam and vapor and stuff coming out?

A. Not over the hole; there may have been.
167 I could not remember but what there was something on the other side.

Q. You cannot say positively then whether there was any covering over that hole or anything?

A. No.

Q. Did it impress you as being active, flowing out, all that steam and vapor?

A. Yes, it was quite a little geyser.

By Mr. Parmer:

Q. When you put this patch on this after hole in exhibit 6, did you sort of clean it up?

A. Yes.

Q. So that you could have a smooth surface?

A. Yes.

Q. In this after hole in Exhibit 6, was the principal thing which was coming out of that hole water?

A. It would be hard to say because there was so much pressure but that is all you could see of it; there was quite a considerable amount of it.

The Court:

How long had the engine been running to develop that pressure?

Witness:

Immediately he started it. I could see it; it did not take a minute or any time at all; immediately he started it I could see it.

By Mr. Parmer:

Q. Was it a continuous stream or did it come out in jerks?

A. Jerks and spurts.

Q. You did make some inquiries in regard to
168 the bilges?

A. Yes, I asked Mr. Blount, I said: "You must have to pump the bilges quite often"; he said, "I don't pump them at all except once a week or every couple of weeks."

Q. In other words he indicated there was no condition of the bilges which would follow from the condition of the pipe?

A. That is what he told me at the time.

Q. At the time you were called aboard the ship your sole idea in going on board was to figure on this problem of putting the exhaust through the stack?

A. Yes.

Q. At that time you didn't know anything about these holes in the pipe?

A. No, sir.

Q. In order to find out about these holes you had to rip up the carpets in the rooms and get down and examine it to find out?

A. Yes.

Q. That was something extra which you had not counted on when you went on board the ship?

A. Yes.

Q. Were these hatches covered by carpets?

A. Yes.

By Mr. Mershon:

Q. It was only in the aft-stateroom that the carpet was over the floor?

A. Not all of them.

Q. But not in the bathroom?

A. No, I guess not.

169 The Court:

All right, gentlemen; we will take a recess until two o'clock. Are you through with this witness?

Mr. Mershon:

Yes.

(Recess.)

170 OTIS COLEE, a witness on behalf of the Claimants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Mershon:

Q. What is your name, please?

A. Otis Colee.

Q. Where do you live?

A. I live two miles north of Daytona Beach.

Q. That is in Florida?

A. Yes.

Q. Are you at present employed by Mr. C. M. Baker?

A. Yes.

Q. And what firm or business does he operate at Daytona Beach?

A. Daytona Beach Boat Works.

Q. What does he do there?

A. Well, I don't know just how to put it; he builds boats and he stores boats and does general repairs of all kinds.

Q. Does he buy and sell boats?

A. He does.

Q. What is your position with him?

A. I rank as Chief Engineer with him.

Q. Were you his Chief Engineer in October, 1936?

A. Yes.

Q. Did you go aboard the Yacht Friendship II, as Mr. Baker's chief engineer when he acquired that boat from the trustee in bankruptcy?

171 A. Yes.

Q. I mean the trustee of the Federal Court?

A. Yes.

Q. Do you recall about when it was you went aboard?

A. As near as I can recall, I left Daytona Beach on the 5th day of October—I am not sure but I think we went aboard somewhere around the 3th of October.

Q. Was the Friendship II lying at dock over at Ft. Myers?

A. Yes it was lying at a private home, somewhere just south of the main part of town.

Q. She was tied up to the shore?

A. Yes, and also the Dalton was on the other side.

Q. Did you inspect the Friendship II when you went aboard?

A. Just a general overlooking of it.

Q. Did you make any changes or repairs in the exhaust pipes of the boat after you went aboard?

A. No, not until we came from Ft. Myers to Miami and we made a change at the Coconut Grove Boat Works.

Q. Were you aboard as chief engineer when the Friendship II was brought by Mr. Baker over to the Coconut Grove Boat Works at Miami?

A. Yes, I was.

Q. Did you observe anything about the condition of the exhaust pipes of that boat while you were bringing her over from Ft. Myers to Miami?

A. Yes, I noticed these patches put on there were giving through; they were leaking water in the bilges.

Q. What attracted your attention to it?

172. A. I went back to it and put on a new patch; just had it on a short time; I went back and checked the stuffing box and found water in the bilges, and I looked around—I started looking around, raised the floor boards and found that the exhaust pipes were leaking and I also got a headache from the monoxide gas which was under the floor board.

Q. You felt the effects of the gas that was coming out of these leaks?

A. Yes.

Q. How did it affect you?

A. Slight headache.

Q. Besides seeing about the bilge, what if anything, did you do to the patches?

A. Didn't do anything.

Q. What precaution, if any, did you take against the effect of the gas that was coming from those leaks?

A. Raised all of the windows to get circulation of air.

Q. Did you issue any instructions to your crew?

A. Yes, I told the boys that I would go in and take care of them myself. I told the sailors and the Captain and the cook that I was going under the deck quarters.

Q. On checking the stuffing box—is that what you call it?

A. Yes.

Q. That is the box that surrounds the hole where the propeller shaft goes out to the water?

173 A. Yes.

Q. Did you find any leaks there?

A. They would have only small leaks of water, small drips of water.

Q. They wouldn't account for the amount of water in the bilge?

A. No.

Q. You do know that sufficient water was coming through these patches on the exhaust pipes to create too much water in the bilge?

A. Yes.

Q. Did you observe the water in the bilge from the engine room?

A. No, sir, you couldn't tell that on account of the separate bulk head.

Q. How did you become aware of the water in the bilge?

A. When I raised the hatches up to look at the stuffing box, I could see water. I went around to see where the water was coming from and I found it under the dining room salon on the port side.

Q. Were you present at the Coconut Grove Boat Works, otherwise known as Donovan's Boat Yard at Coconut Grove, when the exhaust pipes were removed from the Friendship II?

A. Yes.

Q. As they came out of the boat at Donovan's Boat Yard, were they in the same condition as they
174 were when you first went aboard over at Ft. Myers?

A. Yes.

Q. I will ask you to step over here Mr. Collee and I will state to you that these six pipes, Exhibits 1 to 6, have been identified as the exhaust pipes which came out of the Friendship II, at Donovan's Boat Yard, saying that these sections 4 and 3 represent the last section of the port exhaust pipe toward the stern and this exhaust pipe (referring to Exhibit 6) had two patches on it. Do you recognize these exhaust pipes?

A. Yes.

Q. Which of the patches on the pipe, Exhibit 6, was the one that you say was leaking and causing the water in the bilge when you brought it over?

A. This one here.

Q. That is the forward patch?

A. Yes.

Mr. Mershon:

The witness refers to the patch about two and one-half feet from the end of the pipe.

Q. Now referring to the construction and design of the Yacht Friendship II, I will ask you if you had occasion to look in the bilge through which these exhaust pipes ran?

A. Nothing other than the checking of the stuffing box at the present time.

Q. And later when the exhaust pipes were taken out, you were present?

175 A. I was.

Q. You had a full chance to observe the construction of the boat?

A. Yes.

Q. Were there any partitions or anything in the bilge? aft of the bulk head that separated the engine room from the dining room?

A. No, there were no bulk heads aft.

Q. It was wide open?

A. Yes, on account of the water tanks; of course there was circulation of air going around the water tanks.

Q. There was a circulation of air which would go around the water tanks?

A. Yes.

Q. The water tanks took up some space in the bilge?

A. Yes.

Q. Did the bilge open into the state rooms through vents which connect with the inside of the state rooms to an opening between the walls of the state rooms and the outside walls of the cabin?

A. Yes.

Q. So there was a direct communication for air or gasses from the bilge directly into the state rooms through these vents?

A. Through the vents, yes.

Q. Were there other means of direct communication from the bilge into the state rooms through main
176 holes or various kinds of hatches?

A. Well I don't know, on account of at certain times there would be hatches and at other times there would be carpets on the floor.

Q. But all of these hatches in the bathrooms and state rooms have a hole in them that you reach into to lift them up?

A. I don't know whether all of them but some of them did.

Q. Were there any carpets in the bathrooms?

A. There was linoleum, in the bathroom on the port side.

Q. In the bathroom on the port side? And that linoleum also covered a hatch?

A. Yes.

Q. And the hatch was removed with the linoleum fastened to it?

A. That I don't remember.

Q. I show you two photographs which have been marked Claimant's Exhibits 7 and 8 and I ask you if you recognize those as being true representations of the double state room on the lower deck at the end of the hall which ran from the dining room on the Friendship II?

A. Yes, looks like the starboard master state room.

Q. Referring to Exhibit 8. Now what does Exhibit 7 look like to you?

A. I don't quite remember on account of not being on the boat long enough to be acquainted with it. The first one I understand but the second one, I don't.

177 Q. To refresh your memory, I will ask you if Exhibit 7 resembles the port bunk in the master state room or double state room on the Friendship II?

A. This is the starboard state room here (indicating). Here is the bathroom; I wasn't there long enough to get it acquainted in my mind.

Q. You were mainly interested in the engines and the pipes?

A. Yes.

Q. What equipment, if any, was there in the engine room for ventilating it?

A. Two windows on the port side and an exhaust fan.

Q. What side was the exhaust fan on?

A. The exhaust fan was on the forward bulk head.

X Q. Would that fan have a tendency to draw air across the engine room toward the rear of the boat?

A. Yes it would.

Q. Was there any opening in the rear bulkhead of the engine room through which air and gasses might pass from the engine room into the bilge?

A. There was a small opening around the shaft.

Q. The propeller shaft?

A. Yes, a small opening, I don't know the dimensions of that but there may have been some circulation around it, maybe a half inch, something like that.

Q. Now the floor of the engine room was on the bottom of the boat?

A. No, it was built up higher; I guess it was
178. maybe two feet from the engine room floor to—

Q. I see, but the floor of the dining room was built up higher than the engine room?

A. On the same level.

Q. Did you make any report to Mr. Baker, your owner of the condition you found the exhaust pipes in?

A. Yes, I told him that I found them in an unsatisfactory condition and he wanted a new exhaust line put in.

Q. From what you saw there, did you or did you not regard the condition of those exhaust pipes as dangerous to the crew and the guests aboard?

A. Yes, I did.

Mr. Mershon:

That is all.

Cross Examination.

By Mr. Parmer:

Q. Your primary interest in looking below the floor was to look at the stuffing box?

A. Yes.

Q. Then you saw some water in the bilge?

A. Yes.

Q. How much water?

A. Well, I don't know exactly. I don't know how many gallons there was in it.

Q. You had no idea that more than the ordinary amount of water was in the bilge at that time?

179 A. A little more than a boat of that type should have—a lot more than a boat of that type should have.

Q. Unless it was pumped out?

A. Unless it was pumped out recently.

Q. Then in a boat in current use, you would not expect to find so much water in it?

A. No, sir.

Q. Were you aware at the time you looked at the boat that the boat had been in the custody of the Court for a considerable period of time before Mr. Baker got it and that it was not in use at that time?

A. Yes.

Q. And it is true that a boat lying in water without pumping the bilges, it will accumulate more water in the bilges than ordinarily?

A. Yes, it will. When I found the water was when I had my motors running.

Q. I understand, but just allowing a boat to remain in the water and failing to use the bilge pump and pump the bilges, will increase the amount of water in the bilges?

A. In some cases it will and in some not.

Q. That is where the water comes in, leaking in from the sides?

A. Comes through the stuffing box.

Q. Also in from the sides?

A. Yes.

180 Q. And the bilges are supposed to take care of that?

A. Yes.

Q. Of such water?

A. Yes.

Q. It was at that time while you were looking at this bilge that you happened to see the leak from one of these patches?

A. Yes.

Q. And your motor was running then?

A. Yes.

Q. Where was the boat?

A. The boat was leaving Ft. Myers coming to Miami.

Q. It was on a trip?

A. Yes.

Q. Was it king at both ends of the rubber patch or only one end?

A. Only one end.

Q. Did you notice at that time that the rubber patch had around it a metal strip?

A. Yes.

Q. Did you endeavor to tighten it?

A. No, sir.

Q. You perceived at the time that the metal strip was held together and could be tightened by means of a bolt and a nut which were there, did you not? Just answer the question. You saw the bolt and the nut there, did you?

A. Yes.

Q. Did you feel that you wouldn't patch it because it was galvanized iron?

181

A. Yes.

Q. Did you think it might break?

A. I don't know.

Q. Any way you didn't want to fool with it and tighten it up?

A. Yes.

Q. For all you knew, you could have tightened it?

A. I don't know whether I could or not.

Q. You made no effort?

A. I made no effort at all.

Q. But as an engineer, you are familiar, are you not, where bolts and nuts are used to tighten up things when they become loose?

A. Yes.

Q. And for a minor repair you could twist the bolt in the nut and tighten it up, is that true?

A. That is correct.

Q. Now you say the particular place where you discovered this particular leak of which you are talking was in the dining room?

A. Yes.

Q. That is just underneath the floor of the dining room?

A. The floor of the dining room.

Q. And you found that by a hatch that was
182 in the dining room?

A. Yes.

Q. Just underneath the hatch?

A. Yes.

Q. Now in the engine room of that boat, the engine is entirely enclosed by means of bulk heads on four sides?

A. Yes.

Q. Entirely cut off from the bilges except for this place where the shaft goes through one of the bulk-heads?

A. Yes.

Q. And there was a space around the shaft you say, having a dimension of half an inch?

A. Something like that.

Q. You are not perfectly sure what it was?

A. No I am not.

Q. Did the engine room have a skylight?

A. No, sir.

Q. But it had a window on each side?

A. No, it had two windows on the left side and no windows at all that you could open on the starboard side.

Q. Were there windows on the starboard side?

A. Glass but not windows.

Q. Just glass?

A. Yes.

Q. What kind of a fan was this?

A. 14 or 16 inch.

Q. Was it so arranged that it could be pointed
183 in the direction that you wanted ventilation?

A. Yes.

Q. Well, then, if it could be pointed where you wanted it, it would follow that necessarily when that fan was going it would blow the atmosphere of the engine room toward the bilges, would it not?

A. The bulkhead was just about here (indicating) and you could turn the fan and blow the air forward or whichever way you wanted to.

Q. Dependent on the way it was pointed?

A. Yes, sir.

Q. I think you expressed your opinion with regard to the danger in allowing this patch to remain in the condition in which you found it?

A. Yes.

Q. If it remained in that condition it might grow worse?

A. Yes.

Q. During the time that you were going around from Fort Meyers to Miami, you didn't attempt to make any repair of it then?

A. No, sir.

Q. You slept in the deck room yourself?

A. No, I slept in the forward quarters.

Q. Nobody slept in the passenger accommodations at all?

A. No, they are guest quarters.

Q. There were no guests on the boat at that time?

A. No.

Q. When you got around to Mr. Baker's place, you decided to get new exhaust pipes entirely?

A. Yes.

Q. Did you put them up in the stack?

A. No, in the same place that the old ones came out.

184

Re-Direct Examination.

By Mr. Mershon:

Q. Are you familiar with the record of the Friendship II as to when she was built?

A. As near as I recall, it was in 1922.

Q. Can you say whether these pipes that you found in her and which were taken out were the original equipment with which she came out of the factory?

A. No, I could not say.

Q. You could not tell that?

A. No, sir, I could not tell that.

Q. What size exhaust pipes are those that were taken out? And which are here in evidence?

A. I think these measure 3 inches outside diameter.

Q. What size pipes did you replace them with?

A. 3½ inches.

Q. Copper tubing?

A. Yes.

Re-Cross Examination.

By Mr. Farmer:

Q. Tell me, Mr. Colee, when you looked at this patch that was leaking at one end you say you smelled some of the motor gas?

A. Yes.

185 Q. Was the smell that you smelled at the time the same as anyone would smell from the exhaust of an automobile?

A. About the same thing.

Q. Well, did you stay there very long? Smelling it?

A. No, sir.

Q. How long did you stay smelling it?

A. Just a very few minutes; I would go in and out.

Q. What is that?

A. I would go in and out; I didn't stay in there any length of time, just a few minutes at a time, and then I would go back up for fresh air.

Q. When you uncovered the hatchway and looked down and found the condition, what did you do?

A. I hooked up a small motor we had, $\frac{1}{4}$ H. P. electric motor, and pumped the bilges out with that on account of the other pump in the engine room was not working. I hooked up that to pump out the bilges until we could get to Miami.

Q. Where did you put the receiving end of that pump?

A. Right down in the dining salon, back of it.

Q. Through the hatch?

A. About the center of the hatchway.

Q. You pumped the bilges with this motor pump?

A. Yes.

Q. You didn't remain in that vicinity any more than it was necessary?

A. No, sir.

Q. And during that time you would go back and forth?

A. Yes.

Q. You were visiting other places while this pump was working?

A. I would go back there maybe every three
186 hours or something like that, or two hours.

Q. Every 3 hours you would go back and see how the pump was getting along?

A. No, sir. I would start the pump to pumping the water out and I would watch it and as soon as it pumped it out in one place I would shut it off and then go on back to the engine room.

Q. How long did the pump work pumping out the bilges?

A. That I don't remember.

Q. Did it work as long as one hour?

A. No, it was under one hour.

Q. While it was working you would stick your head out of the window?

A. Yes, I would stick my head out of the window to get fresh air.

Q. As a result of the precautions that you took you didn't get any headache, did you?

A. I did.

Q. You got a headache and then you stuck your head out of the window?

A. Yes, sir.

Re-Direct Examination.

By Mr. Mershon:

Q. Was the water in the bilge coming through loose planks or leaks in the bottom?

A. No, sir; the water came into the bilges that I found in there through the exhaust line.

Re-Cross Examination.

By Mr. Parmer:

Q. You say some water came from the exhaust line into the bilges?

A. Yes.

Q. You don't know where the water that was there before you arrived came from?

A. We were on dry dock back in Fort Meyers and we had taken the plug out and we had 3 inches of water before we left Fort Meyers.

Q. How long had the boat remained in the water after you had gotten out of dry dock?

A. I think it was 3 days.

Q. You can't tell us just how deep the water was in the bilges?

A. No, sir.

Q. Therefore, you can't tell us really whether it was more than ordinarily?

A. No, because I was not acquainted with the boat. I had just been on it a short time.

Re-Direct Examination.

By Mr. Mershon:

Q. But your idea was to keep the bilges dry?

A. Yes.

Q. The water kept constantly coming in through the exhaust?

A. Yes, sir.

188 Mr. Mershon:

If Your Honor please, I now offer in evidence as Claimants' Exhibits 9-A to 9-L the hospital records which have previously been identified, as Claimant's Exhibits under those numbers, the authenticity and making of which have been proven by stipulation and made a part of the record.

Mr. Parmer:

If the offer has been completed, I object to the admission in evidence of these records on the grounds that they are hearsay and not admissible to prove the facts which they purport to state; that the proper way to prove the facts attempted to be proven in this fashion is to call the physicians who are acquainted with the facts which these records purport to state. I am informed that each of the physicians who are represented as having made statements in these records are available. Dr. Spencer Howell is in the Security Building, a block

and a half from the Court House, and Dr. Harris is in the Huntington Bldg., slightly further from the Court. I believe these are the two physicians who have made entries. In addition to that, there are entries here which I do not think would be admissible under any theory. In this connection I might say that ordinarily I would not object to records going into evidence because most often they are true but in this case I expect to prove when Dr. Howell is called that this record is not true and was not meant to be true at the time it was made.

Mr. Mershon:

The offer is made subject to any cross examination of any persons mentioned therein, or persons in charge of the records or making thereof, which the petitioner may wish to make. Have you stated full your objections?

189 Mr. Parmer:

I have stated by objection completely and I have no reply to what you have just stated.

The Court:

Let's have the argument from one side at a time. Are you prepared to argue that, Mr. Mershon?

Mr. Mershon:

Yes.

The Court:

Are you prepared to argue your objections?

Mr. Parmer:

I have only this one thing to say, which is in answer to what I have just heard. A suggestion has been made that these be received subject to any cross examination or anything that I might want to bring out by present-

ing witnesses. I think that is putting the cart before the horse and claimants are still in their direct case.

(Extended legal argument.)

The Court:

In the first place, the documents are hearsay, as to the issue here, their immateriality is with reference to the diagnosis of the patient, Mrs. Just. The real issue as to which these documents are tendered is the cause of this lady being admitted as a patient in the hospital, whether it was CO² poisoning, carbon monoxide, or whether it was some other reason. Now these sheets indicate that she was admitted for carbon monoxide poisoning. The witnesses are available and this is hearsay, so fundamentally I think that the tendered documents as proving that fact are hearsay. If the documents were tendered to show the date of admission, how long the patient remained in the hospital and routine matters of that nature, that would be a different proposition.

190 But this is shown evidence involving the diagnosis of the ailment for which Mrs. Just was admitted for treatment in the hospital. (Citing authorities.) I think that we should have the benefit of witnesses present, subject to cross examination, to testify and not depend on these records. I shall admit the documents for the purpose of showing admission into the hospital, how long she remained there and possibly some other matters of that nature, but as to the real issue here, I shall hold this as opinion evidence, which is of the hearsay class, and think it should not be admitted.

Mr. Mershon:

We also offer, if the Court please, the personal history signed by Dr. Spencer Howell, in so far as it reflects the treatment which Dr. Howell, over his signature, recites that he gave to this patient.

(Legal argument.)

191. Thereupon DR. FRANK W. FOXWORTHY was called as a witness in behalf of the Claimants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Mayne:

Q. Please state your full name, please.

A. Dr. Frank W. Foxworthy.

Q. Where do you live?

A. Miami Beach.

Q. Do you live here all of the time or do you commute?

A. Part of the time here.

Q. At the present time where are you residing?

A. In Illinois.

Q. You are a married man, are you?

A. I am.

Q. Do you have a family?

A. One daughter.

Q. How old are you?

A. 63.

Q. What schools or school are you a graduate of, doctor?

A. I attended the Depauw University at Greencastle, Indiana and the Indiana University of Medicine, School of Medicine, and I had some post-graduate work at the New York Post-Graduate School, in Paris and London and several other different places.

Q. Did you take post-graduate work in Paris and London?

A. Yes, sir.

Q. Was your schooling before or after the Spanish-American war?

A. After. I had three years of the Spanish-American war in Cuba and two years in China.

Q. Were you in the Medical Corps?

A. I was a captain in the 34th U. S. Volunteers; I was acting surgeon at one time in the United States Army, and then I was Chief Surgeon of the National Guard of Indiana and also surgeon of the First Indiana on the Mexican border.

Q. That was in 1917?

A. About 1916 or 1917.

Q. After the Spanish-American war you took a trip around the world, I understand?

A. Yes.

Q. It was during these travels that you took your post-graduate work?

A. Part of it.

Q. When did you actively engaged in the practice of medicine?

A. In the private practice of medicine in 1901.

Q. And where did you engage in that practice?

A. In Indianapolis.

Q. Now in the course of your practice did you specialize in any particular branch of medicine?

A. Internal medicine and insurance medicine.

Q. What do you mean by insurance medicine?

193 A. It seems to be a specialty nowadays, Mr. Mayne, where most of your time is occupied with insurance work—medical work, of course.

Q. Can you state how many companies you have represented in this medical work?

A. Well, at one time I represented over 70 here in Miami when the boom was first here; I was Medical Director of two different companies in Indianapolis, and I was chairman of the Medical Section of the Mutual Life and was on the board three years.

Q. How long did you stay in Indianapolis?

A. Until 1925.

Q. Were you on the staff of any hospital there?

A. Yes.

Q. What hospital?

A. St. Vincent's, Methodist Hospital and the City Hospital.

Q. How long did you practice in Indianapolis?

A. One year as an interne at St. Vincent's Hospital, and then from 1901 to 1925.

Q. Where did you go then, doctor?

A. Miami Beach.

Q. I believe you stated that you had one daughter, is that correct?

The Court:

Q. Did you know Mrs. Charlotte Just before 194 she was married?

A. Yes, sir.

Q. When did you become acquainted with Mrs. Charlotte Just?

A. When she was my daughter's room-mate in college about ten years ago.

Q. And where was this college?

A. At Millbrook, N. Y.

Q. The Bennett School?

A. Yes, sir.

Q. Mrs. Just as I understand was a school room-mate of your daughter?

A. Yes, sir.

Q. During what period of time was that?

A. That was probably the better part of two years, following which Mrs. Just visited us several times of several weeks duration.

Q. During the time that Mrs. Just was with your daughter at the Bennett School did she visit you in Miami?

A. She did.

Q. How many times would you say she visited you?

A. Several different times, maybe four or five or six.

Q. How long would you say she stayed with you?

A. Sometimes as much as two months.

Q. At that time can you describe just in a general way, not too much in detail, Mrs. Just's general appearance so far as you could observe?

A. Mrs. Just's general appearance was that
195 of an active healthy young girl; she is very lively in her movements; her brain was keen and active and oftentimes she got the point before you reached it in conversation. She was generally what you would type as a mental type of girl and an exceedingly bright mind. She had no defects, physical defects, that I know of.

Q. Did she express personality?

A. A vivid personality; she had "it".

Q. When did your daughter marry?

A. About eight years ago.

Q. Did you see Mrs. Just at that time?

A. She was my daughter's maid of honor at the wedding.

Q. And that was where?

A. In New York City.

Q. Now at that time did you observe anything unusual about Mrs. Just at the time of the wedding?

A. No, sir.

Q. Now when did you see Mrs. Just after that time?

A. I don't know; I can't give the exact dates.

Q. Approximately?

A. I remember distinctly that when Mrs. Just got married she wired us that she was coming down here on her wedding trip to visit us at the Pancoast Hotel.

Q. Did you meet her and Mr. Just at that time?

A. Yes.

Q. How long were you with them on that occasion?

A. Probably several weeks.

196 Q. Then they were both down here?

A. Yes.

Q. Visiting your home?

A. We were living at the hotel—

Q. Now did you see Mrs. Just after that time?

A. Yes, sir.

Q. After they were here on their honeymoon, so to speak?

A. Yes.

Q. When was that?

A. I think the next time was two or three years, when she came down to spend the winter and then in the meantime she got married and had one child.

Q. Let's see if I can refresh your recollection. It was in the spring of 1935, was it not?

A. I think so.

Q. At that time her baby was a mere infant, is that correct?

A. Yes.

Q. Where was she living at the time when you saw her here in 1935?

A. I think she was in a bungalow there at the Nautilus Hotel, on the beach.

Q. Who was with her at that time?

A. My recollection is that it was her mother, grandmother, aunt, nurse and baby.

Q. Will you tell us if Mrs. Just showed any interest or great interest in her child at that time?

A. She always had; she always took extreme
197 care that the child got proper attention.

Q. Do you know whether at the time you saw her in the spring of 1935 was shortly after her divorce?

A. I don't remember.

Q. Well at that time, did you see her in the spring of 1935?

A. It was probably so.

Q. Well, her husband was not here?

A. No, he was not with her.

Mr. Parmer:

I will concede that it was shortly after the divorce.

Q. Now at that time did you observe anything about her manner, personality, or expression in the spring of 1935 that would cause you to believe that any change had come into her life?

A. No change, more than what a divorce would naturally bring. Are you asking about physical change or what?

Q. Yes.

A. I noticed no change physically in her.

Q. Was she lively and happy?

A. She was quite lively but moody, of course, on account of her divorce. She often was at our house in the evenings. We called her "Shoddy".

Q. Shoddy was her nickname?

A. Yes, sir.

Q. Did you observe anything mentally wrong with her in the spring of 1935?

A. No, I didn't.

Q. Did she ever express to you any concern
198 about her child at that time?

A. She was always afraid that something would happen and she would lose her child.

Q. Did she tell you why?

A. She was afraid always that something would happen and her husband would get hold of the child.

Q. And that was in the spring of 1935?

A. Yes, sir.

Q. Did you see Mrs. Just or any members of her family after the spring of 1935?

A. Upon our return to Miami the last week in December, 1935, I think she was here at that time.

Q. Who was with her at that time?

A. She was with her aunt.

Q. That is Mrs. Bischoff?

A. Yes.

Q. Was her baby with her?

A. Yes, the baby and nurse.

Q. Where were they living here?

A. At Archway Villas.

Q. At that time did you see her quite often?

A. Quite a great deal. Our house was at 2206 Park Avenue and it was on the way down and so she often dropped in driving a car herself, to see my wife and her aunt. She always called me Uncle Frank. It was a daily matter for Shoddy to drop in the house.

Q. You would see her almost daily, is that right?

A. Yes.

Q. Did you ever see her in company with Mr. McKay, at your home?

A. Oh, yes, previously; the year before. She had spent several evenings there with Mr. McKay.

Q. They would come over and visit with you?

A. Yes.

Q. Now in December, 1935, and January, up to March 2, 1936, will you describe in a general way just her attitude on things and conditions, whether she expressed herself in a jovial or moody disposition?

A. From December until March 2nd you say?

Q. Yes.

A. Shoddy and Jack would often come over in the evening; they would be very cheerful and talkative and she would drop in in the daytime and I might be there and Mrs. Bischoff would be there; and quite often we would go out to see them at their house and take dinner there with them and they would dine with us.

Q. Did you observe any action on her part which would cause you to believe that her mentality had changed in any way?

A. I don't think so.

Q. What do you mean by you don't think so?

A. There was not any special reason for her
200 to mentally change. She was just the same old
"Shoddy."

Q. Vivacious and full of life?

A. Yes.

Q. A cheerful disposition?

A. Very cheerful, happy and singing; she was always
doing something unusual and she was very athletic.

Q. On these occasions they came over to visit your
home; did you ever observe that she was under the in-
fluence of liquor? Or had a smell of liquor on her per-
son?

A. No, sir. We never allowed liquor to be on our
table.

Q. I did not ask you that.

A. Pardon me.

Q. I asked you whether you observed any liquor on
her person?

A. No.

Q. Did you ever observe on any of these visits to your
home that she was in an intoxicated condition?

A. I have never seen her intoxicated at any time.

Q. This was all prior to March 2nd, 1936?

A. Yes, sir.

Q. Now, Doctor, on March 2, 1936, were you called
to see Mrs. Just?

A. I was.

Q. What time of day did you call?

A. About the middle of the afternoon; I would judge
about 3:30.

Q. Who called you?

201 A. Mrs. Bischoff, her aunt.

Q. What did you do after this telephone call?
I assume that it was a telephone call.

A. Yes. I made arrangements to meet Mrs. Bischoff
and Shoddy at the hospital.

Q. Were you informed where Mrs. Just was at that time?

A. I was.

Q. What were you informed as to that?

A. I was told that she had had an accident on board a yacht; that she was gassed and that she was on her way to the hospital and would I meet her there at that time and take care of the case.

Q. Would you say that was about 3:00 to 3:30 in the afternoon?

A. Yes.

Q. Were you informed who had sent her to the hospital, what doctor?

A. I may have been; I don't remember definitely about that.

Q. Did you go to the hospital?

A. I did.

Q. Who did you see there?

A. I saw Mrs. Bischoff first and then she took me to Shoddy's room. I found her lying on the bed unconscious. The nurse, Miss Dilliard, was taking care of her. As is often the case, in gas poisoning, she had had an involuntary bowel movement and she had been vomiting; she was clammy, perspiring, bluish, and was in
202 an extreme collapse. I at once ordered an oxygen tent.

Q. Before we get to that, I would like to lead up to that. When you arrived at the hospital, did you see Dr. Spencer Howell there?

A. No, sir.

Q. Do you know who had ordered her to the hospital?

A. I understood that he had. He had been there and left, I understand.

Q. Prior to your going to the hospital, had you talked to Dr. Howell over the telephone?

A. Yes, I think I had.

Q. When you arrived at the hospital, did you see the record of Mrs. Just's case there?

A. Yes, sir.

Q. Then you saw Mrs. Just, as I understand?

A. Yes, sir.

Q. Now do you know how long Mrs. Just had been in the hospital before you arrived?

A. Not definitely, Mr. Mayne. She had been there a short time only.

Q. Now do you know how long Mrs. Just had been on the boat after she was exposed to this gas?

A. I was told by—

Mr. Parmer:

I object to what he was told. You don't know of your own knowledge?

Witness:

No.

The Court:

Objection is sustained.

203 Q. Doctor, I wish you would describe in your own language just all that you observed of Mrs. Just at the time you saw her in the hospital on the afternoon of March 2, 1936, about the hour of 3:30 P. M.

A. She was in a collapse, was perspiring; was clammy; her pulse was weak; her respiration shallow and rapid.

Q. What?

A. And rapid. Her bowels had been moving and she had been vomiting; she was a very sick girl.

Q. Doctor, did you observe, at the time you saw Mrs. Just there, any odor of alcohol on her person?

A. There was none whatsoever, absolutely.

Q. Have you ever taken care of an alcoholic case?

A. A great many.

Q. How long does an odor of alcohol remain in the human system?

A. Hours.

Q. Did you smell any alcohol on Mrs. Just? At any time that you were there in the afternoon of March 2nd, 1936?

A. No, sir.

Q. From what you observed of the appearance of Mrs. Just, are you in a position to state whether she was in a state of collapse by reason of alcoholic liquor?

A. She was not.

Q. From what you observed of her condition at the time you saw her there in the hospital, are you in a position to state what the symptoms of her collapse were?

A. Yes. The symptoms that I saw?

Q. Yes.

204

A. Or original symptoms?

Q. From what you observed; what were her symptoms?

A. The symptoms that I saw was simply an unconscious girl with a weak pulse, weak respiration, and she had a cold and clammy skin, ashen pallor.

Q. Well, from those symptoms could you determine what was wrong with her?

A. She had a typical case of carbon monoxide gas poisoning at that stage.

Q. What treatment did you prescribe, if any?

A. The first thing I gave her was a stimulant and oxygen tent. The stimulant was a continuation of what Dr. Howell had given her on the boat. We use ammonia, later on some caffeine glucose intra-veinously, and as the symptoms arose we always provided her with something to stimulate her and give her sufficient power, but at the time I saw her she was too sick to take a bath or move.

Q. Doctor, would you stimulate a patient that was in a state of intoxication by alcoholic liquor?

A. No, indeed.

Q. Would you prescribe an oxygen tent if they were already drunk or intoxicated to the degree of unconsciousness?

A. I never have.

Q. Would you do it?

A. No, indeed.

Q. Now, did Dr. Spencer Howell still continue
205 on this case after you were there?

A. He did.

Q. How long?

A. I think during most of her stay at the hospital.

Q. You also were on the case, were you?

A. Yes, sir.

Q. Anyone else?

A. We called in Dr. Harris at that time also.

Q. Anyone else?

A. Following that, Dr. Agos.

Q. What does he specialize in?

A. Psychiatry.

Q. Who else?

A. Dr. Kennedy.

Q. Who had active charge of the case in the hospital?

A. I did.

Q. I show you, Doctor, Claimants' Exhibit 9-A, and will ask you to state whether or not that is the hospital record of Mrs. Just at the time you were taking care of Mrs. Just?

A. It is, so far as I can judge. This is a cursory examination, of course.

Q. Do you recognize the handwriting of Dr. Howell?

A. Yes, sir.

Q. Do you also recognize the handwriting of Dr. Harris?

A. I don't recognize his handwriting very much. I don't know it very well but I do know Dr. Howell was on the case and I consulted with him several times. I know him personally, very well.

Q. Is there any handwriting in this record, Claimants' Exhibit 9, in your handwriting?

A. There may be and there may not be because I usually dictated what was to be written to my assistant, Dr. Howell.

Q. Dr. Howell?

A. Dr. Howell did the writing for me.

Q. Well, did you ever give any instructions to the nurse and have her write it on the record?

A. Yes, but that was written in the order book. The instructions were always written in the order book, Mr. Mayne, and I dictated to her what to write.

Q. Look at this word, "Dr. Foxworthy".

A. This is all dictated to her at my orders.

Q. State whether or not that is in your handwriting?

A. That is my handwriting. That is my orders.

Q. Do you know who put that note on the record?

A. Probably the nurse would copy it off the order book as they are compelled to do. It simply says "Dr. Foxworthy" and I ordered it done.

Q. Did you see Mrs. Just every day at the hospital?

A. I did.

Q. I believe she was there up to March 7, 1936?

A. She was.

207 Q. Was she discharged as entirely cured?

A. She was not.

Q. Where did she go after that?

A. To her home at Archway Villas.

Q. Now on March 2, 1936, did you see Miss Grunow at that time?

A. I did.

Q. Where did you see her?

A. At Mrs. Just's home at Archway Villas.

Q. What time of day was that?

A. After I had been to see Mrs. Just.

Q. It was at night?

A. It was the latter part of the afternoon, I would judge. I may be in error, but it was the same day.

Q. Will you describe what took place between you and Miss Grunow on that occasion?

A. Miss Grunow was at Shoddy's house and I saw her and examined her there in Shoddy's bedroom. She was still in a highly excited condition; she kept saying, "I am all right"; that she didn't need any medicine and that she was perfectly all right. Her heart was quite faint, her respiration was fast and her reflex was exaggerated. I had difficulty in giving her sedatives to quiet her. She was quite abnormal. She seemed to have a repugnance to medicine of any kind. She had similar symptoms to Shoddy but not to such extent or degree.

Q. Did you observe when you saw her at Mrs. 208 Just's home that afternoon any signs indicating liquor?

A. No, sir.

Q. Did she smell of it?

A. No, indeed.

Q. Was she intoxicated in any way from liquor?

A. She was not.

Q. Now did you see Mrs. Just after that time; if so, where—after she left the hospital?

A. I saw her almost every day and sometimes oftener; we were in communication almost every hour of the day; sometimes in the morning and afternoon; sometimes in the evening and sometimes even during the night we saw her until she left.

Q. Please describe what you observed and what you saw on these professional visits over at Mrs. Just's home?

A. After she returned home she was given a tonic composed of iron, quinine and strychnine; she was given

luminal for the very severe headaches she had. I forgot to mention that both of these girls had these severe headaches and they were not controlled by ordinary sedatives at all. She cried very much; she wept continuously. She was very apathetic and she seemed to have recovered her asphasia, which had been present at the hospital for some time.

Q. What do you mean by this, Doctor, that she seemed to have recovered her asphasia?

A. The lack of speech; use of her ceptral nervous system. I would like to distinguish between that and asphasia. She was examined by me almost every day.

209 I would always listen to her remarks trying to test out her mentality, but she objected vigorously to it; and she could not continue her conversation connectedly very long at a time.

Q. How was her memory?

A. Very poor; very poor on anything in the immediate vicinity, particularly in regard to time; everything was gone it seemed.

Q. Was her speech co-ordinated on any subject for any period of time?

A. No. She kept talking about Gus—that was her little boy—she was so afraid her husband would get Gus. I advised sun-baths and also sea bathing, with a nurse on, and it became so extreme that I suggested that Dr. Harris be called in consultation, and later on I was in consultation with Dr. Agos and I also took the case up with Dr. Carson of New York City, as to what was necessary to bring her out of the depression. At one time we thought of removing her from the house to the hospital but we were afraid she might try to destroy herself so we didn't do it. I did consult with the Sisters as to whether she could provide us with equipment on the first floor so there would be no danger of her jumping out of the window.

Q. Was she depressed mentally?

A. Terribly so.

Q. Did she ever indicate in your presence that she was going to kill herself?

A. She kept saying, "What is the use of it; why am I here?" She didn't say the words "kill herself" at any time or show any attempt other than say there was not any use in living. She cried all the time. You could not get her out of these fits of crying. Even if we took her riding or to a movie or took her walking, she would cry and cry. I talked to her a great deal when we were together and I asked her to please control herself, but her mind would seem a blank.

Q. Was she under the care of nurses all during this period of time?

A. I think so, yes.

Q. Now, Doctor, up to what time did you wait on her down here in Miami?

A. Up to the time we decided to send her to her home.

Q. You mean to St. Louis?

A. Yes, to St. Louis. To her home in St. Louis.

Q. Do you know over what period of time you waited on Mrs. Just?

A. You mean the exact dates?

Q. Yes; do you have any record with you?

A. I do not have any record with me but it was approximately from the 2nd of March until the latter part of April; I think she went home about the first of May; that is my recollection.

Q. During that period of time would you say that you saw her every day?

A. I think I did. I have records to show that, of course.

Q. Is it also true that you saw her more than once a day on several occasions?

A. Yes, indeed. In fact Mrs. Bischoff would be on the telephone pretty nearly every hour in the day; they were so solicitous of her condition.

Q. Did you render her a bill for services?

A. I did.

Q. How much was that?

A. Mr. Mayne, I can't say offhand but I can get it.

Q. To refresh your recollection, Doctor, was it \$705.00?

A. Something in that neighborhood.

Q. Did you also render a bill to Miss Grunow for services you performed?

A. I did.

Q. Have you any recollection how much that was?

A. My recollection is that it was a very small amount, probably \$55 or \$50.

Q. And you have been paid those items, have you?

A. I have.

Q. Doctor, who furnished the case history on Mrs. Just to you?

A. Who furnished the case history?

Q. Yes.

A. The case history was developed as the case went along in the hospital.

Q. I mean who gave you the first information concerning the case?

A. Oh, I beg your pardon. In the time of sequence, Mrs. Bischoff telephoned, that was the first thing I knew; following that comes visiting Mrs. Just; Dr. Howell, of course, and Jack McKay of course.

Q. Did Dr. Howell give you a history of the case?

A. Yes, we spent two hours talking over the history of the case on my front porch.

Q. What did he tell you about the history of the case?

A. He says "carbon monoxide".

Q. After you saw Mrs. Just, and saw her symptoms, did you reach that same conclusion?

A. Exactly.

Q. Were you satisfied with the treatment that Dr. Howell had commenced prior to your arrival at the hospital, in view of the symptoms Mrs. Just had?

A. He gave the ordinary treatment, which was successful.

Q. Were you satisfied with his diagnosis and also the treatment that he was giving?

A. Yes, sir.

Q. Did Dr. Howell ever tell you that Mrs. Just was intoxicated; that her condition was due to intoxication?

A. He did not.

Q. I mean alcoholic indications?

A. I understand.

Q. Doctor, the last time that you saw Mrs. Just, in March or April, 1936, are you in a position to state whether she was in good health mentally?

A. She was far from it.

Q. Did she have to go to St. Louis under the care of a nurse?

A. She did.

Q. Are you in a position to state whether
213 from your observation of her after that time that she had any mental impairment?

A. I was so worried about her that I told the family that she had to be watched all the time. Her mother came from St. Louis here to assist in taking care of her. I thought she was not in good condition mentally at all; her mind was a blank; she had no memory; she was unable to concentrate on any one subject. She was continuously keeping up this terrible sing-song, "Oh, what's it all about?"

Q. Now during your observation of Mrs. Just after she came back from the hospital, did she show any interest in her child?

A. She worried about the child continuously; she kept asking for Gus; she was asking for Gus; she was afraid her former husband would try to take him away from her.

Q. Are you in a position to state whether you attributed her condition that you observed after she left

the hospital, and even while she was in the hospital, to a condition that would arise from carbon monoxide poisoning?

A. Yes, sir.

Q. And what was your conclusion on that?

A. The diagnosis is undoubtedly carbon monoxide poisoning with the sequela of symptoms following.

Mr. Mayne:

All right; you may examine.

214

Cross Examination.

By Mr. Parmer:

Q. Dr. Foxworthy, when did you receive on March 2nd word from Mrs. Bischoff that something had happened to Mrs. Just?

A. About the middle of the afternoon.

Q. In time what was that?

A. I should judge about 3:30.

Q. You went to St. Francis' Hospital immediately?

A. I did.

Q. And when you got there you went immediately to the room where Mrs. Just was?

A. As far as I remember.

Q. That is just what we want, what you remember.

A. All right.

Q. When you got to that room you found Mrs. Just there and also Mrs. Bischoff?

A. I don't remember if Mrs. Bischoff was in the room there at the time or not. I may have seen her downstairs then but I saw her there at the hospital.

Q. You didn't see Dr. Howell?

A. I don't remember it.

Q. Then did you look over the record—the hospital record?

A. What record?

Q. The hospital record which had been made on the case.

A. Well, there had been no hospital record made so far excepting orders and excepting what is done usually at the front desk.

Q. Had orders been made out?

A. I examined the record book which is an order book. You have seen it, haven't you; you know what I mean, what I am talking about?

Q. I do know what you are talking about.

215 A. I ~~examined~~ that carefully.

Q. You examined the order book?

A. Yes.

Q. Did you see any order there which had been made by Dr. Howell?

A. Did I do what?

Q. Did you see any order in the order book which had been made by Dr. Howell?

A. They had all been made by Dr. Howell.

Q. Then you saw one, didn't you?

A. Of course.

Q. Can you remember what the order, or what orders if they be plural, were given by Dr. Howell?

A. The record would show that. It is not necessary to burden my memory with a thing like that.

Q. Do the orders given by Dr. Howell appear in the record which we have here?

A. That is for you to determine; I don't know.

Q. Well, sir, since you are the Doctor, will you please look over the record?

A. That is in the record book.

Q. I said, do the orders which were given by Dr. Howell on the first day appear in these records which have been marked Claimants' Exhibit 9-A?

A. I don't know.

Q. Did you ever look?

A. I just got through telling you that I looked
216 at the record book.

Q. I know, but I want to know whether you ever looked at this record which is marked Claimants' Exhibit 9-A.

A. Of course.

Q. When you did look, did you find any orders given by Dr. Howell?

A. I have already told you that I can't remember separate orders. Why don't you produce the book here and look at it yourself?

Q. Please do not ask me questions.

A. I have to explain to you.

Q. Are my questions difficult?

A. They are.

Q. I will try to make them plain to you, sir. Can you tell by looking at these papers, which are marked Claimants' Exhibit 9-A, whether there are any orders written in these papers which were issued by Dr. Howell on the first day that Mrs. Just was in the hospital?

A. I have already answered that question once.

The Court:

The question is, Doctor, are you familiar with that paper right there (Exhibit 9-A)?

Witness:

I have read it and I have seen the paper.

The Court:

Now the question is: Are there incorporated in that paper any orders that Dr. Howell had given, which you saw?

Witness:

I suppose so; the nurse copies them.

217 The Court:

The question did not call for your supposition; it only calls for a straight yes or no answer. Does that paper there contain any of the orders which Dr. Howell had given?

Witness:

It undoubtedly does.

By Mr. Parmer:

Q. Is the light difficult for you, Doctor?

A. The light is most difficult.

Q. Suppose you come over here to this light.

A. (Witness goes to light.) I have not seen this order book for over a year. I still remember that there was an enema of black coffee given; I would not say this is all of the order, because it is impossible to remember things like that.

The Court:

Doctor, you and Mr. Parmer have been talking about an order book. I do not know anything about an order book. What is it?

Witness:

May I tell you?

The Court:

Yes.

Witness:

Under the rules of St. Francis Hospital, of which I have been a member of the Staff for many years, the physicians dictate or write all orders for taking care of the patient. It is just a book; it is a book that opens this way (indicating); there are no single sheets in it at all; it is a bound volume and the orders are written

in that book, and that is the book the nurse submitted to me; it is not this one at all.

The Court:

So you have not seen that here in the Court Room at all?

Witness:

No.

218 The Court:

Then the question Mr. Parmer asked you was whether you have any recollection of any language that was used in that order book, either written or dictated by Dr. Howell, as to whether that same language is incorporated in these papers as a part of this document (Claimants' Ex. 9-A)?

Witness:

You see, gentlemen, it is awful hard for me to remember over years individual items.

By Mr. Parmer:

Q. We will drop that for a moment.

A. I thank you.

Q. We will see if we can get the information in another way.

A. I hope so.

Q. Dr. Foxworthy, is it not the practice as far as the order book is concerned to have the orders first dictated into the order book and then transcribed or copied from there into the permanent records of the hospital?

A. As far as I know, it is.

Q. And you have a pretty good idea that it is, have you not?

A. I think so.

219 Q. Yes. Now you do remember that there was some order given by Dr. Howell which was in the order book, and you saw that, didn't you?

A. Mr. Parmer, I saw many orders in the order book, and the probability is I agreed with a good many of them.

Q. I don't care, Doctor; whether you agreed with them or not. What I am asking you is: When you went to the hospital and you proceeded to treat Mrs. Just, did you go to the order book to find out what orders Dr. Howell had already given before you?

A. The nurse brought the order book to me.

Q. Did you look at it?

A. I certainly did.

Q. Was there an order by Dr. Howell in it?

A. Yes.

Q. That is what I want to know. Thank you.

A. Why didn't you ask me in the first place?

Q. I am sorry. I was confused. Now, what I wish to know, Dr. Foxworthy, is whether this order here, at the bottom of which Dr. Howell's name appears, and which is dated March 2nd, 1936, is not the order—copy of the order—from the order book, as it has been transferred and copied from the order book into the hospital record?

A. I think Dr. Howell should answer that question.

Q. You have no recollection?

220 A. It is over a year since I read that book on this case.

Q. But, if as you say it is the practice of the hospital to copy from the order book into the hospital records, such as we have here, you have no doubt that this is the copy before you of the thing that you actually saw in the order book?

A. I suppose it is a copy, of course, but I can't swear to it.

Q. All right, very good. Any way, will you take it to the light and read it.

A. I will try.

Mr. Mayne:

At this point, I think we ought to object to this line of testimony. He is trying to search the memory of this witness as to something that appears apparently on another record that was made by someone other than Dr. Foxworthy. I do not think that is proper cross examination.

Mr. Merten:

He is examining about a record which has not been exhibited to the witness, which he has no opportunity to use to refresh his memory, to be in a position to discuss it.

The Court:

No. I think the question is proper, but I think it is misunderstood by the witness. The question is this, Dr. Foxworthy: Your attention is called to page 5, to page 7 of this Exhibit 9-G and it is specifically called to this language beginning right there and going down to the name "Dr. Howell". Now, Mr. Parmer has asked
221 you whether Dr. Howell gave some orders, with regard to this patient, Mrs. Just, which were incorporated in an order book, and as I understand, your answer was that your recollection was that he did give some orders and that you saw them?

A. Yes, sir.

The Court:

Now, then, the question that Mr. Parmer has now asked you is to examine this language and state whether or not that is a copy of one of the orders, or the orders which were given by Dr. Howell in the book. If you

don't know, just say you don't know, but the question is for you to read that and state whether you remember whether or not that is a part of the order given by Dr. Howell?

A. I have already stated that I remember that there was an order given by Dr. Howell for a black coffee enema, in the order book.

The Court:

If you don't know whether that whole order is an exact copy of the order in the book, you have to say you don't know?

A. I didn't copy it, Your Honor.

The Court:

You are not asked whether it is an accurate copy?

A. I don't know.

(By Mr. Parmer):

Q. Well now, let's see, do you remember whether Dr. Howell had ordered an enema?

A. I remember distinctly that the nurse told me so, and she showed me on the order book.

Q. I think you say you do remember the ordering of black coffee?

A. That is my impression.

Q. Do you remember the ordering of an injection of glucose?

A. I don't remember that so well, Mr. Parmer. May I suggest one thing, please, sir?

Q. Yes.

A. The nurse complained to me on account of the multiplicity of the orders and that is why I cannot begin to remember all of them.

Q. Do you remember that sodium phosphate was ordered?

The Court:

Mr. Farmer, I don't understand your question as to whether he ordered it, or Dr. Howell.

Q. Do you remember that sodium phosphate was ordered by Dr. Howell?

A. It might have been.

Q. But you don't remember?

A. No, sir.

Q. Do you remember that an ice cap was ordered to the epigastric?

A. It may have been.

Q. But you don't remember?

A. I don't remember.

Q. Do you remember that an oxygen tent had been ordered by Dr. Howell?

A. The presumption is no, because I ordered it myself.

Q. And you do remember that it had not
223 been ordered up to the time you got there?

A. Evidently it may have been on his order book and I may have forgotten it, and don't remember it, but there was no oxygen tent there when I first saw her, so I immediately asked for one.

Q. Well, now, before you asked for one, did you speak to Dr. Howell?

A. Well, Mr. Farmer—

Q. Please answer that question yes or no, sir.

A. How can I speak to someone that isn't there.

Q. Don't ask me questions, sir. Answer the question I have given you, if you can.

A. What was the question?

Q. Did you, before ordering the oxygen tent, speak to Dr. Howell?

A. I may have talked to him over the 'phone. I don't remember definitely the time of the day that I talked to him over the 'phone.

Q. Can you answer yes or no whether you talked to him before you ordered the oxygen tent?

A. I can't answer that definitely yes or no.

The Court:

You stated on your direct examination that you talked to Dr. Howell on the porch?

A. Yes.

The Court:

When was that?

A. The next day, in the morning.

The Court:

Q. Did you talk to Dr. Howell personally, and not over the 'phone?

A. No, sir.

224

The Court:

Q. Do you remember whether you talked with him over the 'phone before you went to the hospital?

A. I don't know definitely, Judge. I know that I was probably worried about her and that I went out to the hospital at once, and at the same time might have talked to him, before or after; I tried to get hold of him that very same day.

(By Mr. Parmer):

Q. Did you know Dr. Howell?

A. No.

Q. You had never met him?

A. No, not that I remember of.

Q. And you knew at the time that you went to the hospital to treat Mrs. Just, that he was a doctor dealing with the case, did you not?

A. I had heard his name called; I think Miss Bischoff told me first, but I am not sure about that.

Q. Well, you knew from the fact that he had put his orders in the order book that he was the doctor dealing with the case, did you not?

A. I couldn't even verify the fact right now that he signed that order; you will have to look at your order book to see.

Q. Does your answer to that question depend upon your recollection as to whether he signed the order book?

A. He probably did.

Q. I am asking you, sir, what your understanding was at that time of Dr. Howell with relation to the patient, Mrs. Just?

A. I heard that Dr. Howell had been called
225 in an emergency to take care of Mrs. Just.

Q. Was it your understanding that in addition to being called in an emergency, he had brought Mrs. Just to the hospital and had issued orders with regard to her care, while in the hospital?

A. I didn't know at that time that he had brought her to the hospital until I got there and saw it on the book, I think; now, understand, my recollection may be wrong about that, but I do know that Dr. Howell had seen her in an emergency.

Q. But when you got to the hospital and saw the order book, you knew then that there was another doctor treating the woman, and you don't know whether you got in touch with him before you started treating her yourself, is that right?

A. I told you I tried to get in touch with him very soon after that. I don't remember "minutes", about it.

Q. Let me ask you this, Dr. Foxworthy: Would you assume to treat a patient in a hospital, if you didn't know the physician who was already treating her there and had not consulted him beforehand?

A. I certainly would; it was my own family, of course it was practically my own family. Miss Bischoff asked me to, and out of courtesy one doctor to another dictated that I talked to him. You misunderstood me, Mr. Parmer.

Q. I am trying to find out if you did?

A. I did.

Q. You say it is a matter of courtesy?

226 A. Yes, it was a matter of courtesy that I kept him on the case; she wanted to discharge him.

Q. We will find out about that.

A. Yes.

Q. You say it is only a matter of courtesy?

A. Yes.

Q. Isn't it the part of wisdom at all?

A. Yes.

Q. Sir, when I asked you whether it was only courtesy and you volunteered without my asking you that it is also wise—

The Court:

Don't argue with the witness.

Q. I don't want to argue with you at all.

A. And I don't want you to argue with me.

Q. I won't, Doctor. Why is it wise to get in touch with the doctor who has seen the case from the beginning?

A. To acquire knowledge with him, not to concur in his diagnosis.

Q. But you don't know what he advised in the way of treatment?

A. I have a general idea, of course; you forget that I talked the matter over for two hours with him the next morning.

Q. I don't forget at all.

A. All right.

Q. Sir, I do want you to read these notes made with regard to the treatment advised by Dr. Howell, and you tell us if that is not the standard treatment for alcoholics?

A. "High S. S. Enema": S. S. you understand is soap suds. I don't see why you would use that word. Black coffee is usually given by mouth for alcoholism, and not given by rectum for alcoholism. I never heard of it before in 40 years of practice.

"1000 C. C. of glucose". Now here is something. "Caff". I suppose that was "internal"; I think that is "int." I don't know whether Dr. Howell suggested that or not, but I approved of it.

Q. What is it for?

A. Not for alcoholism. "Caff. Sod. Ben.", it looks like.

Q. What does that mean?

A. I think he means "caffeine sodium benzoate". That is a stimulant itself.

Q. It is a stimulant?

A. Certainly.

Q. Isn't that used to induce respiration, Doctor?

A. Ordinarily, alcoholics have plenty of respiration. Here is something that he has crossed out and I think it is: "CO₂ 2½ 0 2 95% RRN for resp." The "distress" is on the next line. "Ext. of Caroid". Caroid is digested matter; it is given in other forms of stomach disorders.

Q. Are stomach disorders caused sometimes by drinking too much alcohol?

A. Why certainly, but caroid, you know, is digested matter. I don't know why he ordered that. You will have to ask him that question.

Q. Of course, I understand.

A. It looks like "1 dram in cracked ice".
228 "Ex." or "Et."

Q. Would that (pointing) be "Mak"?

A. No, that is "Min."

Q. I can't read it myself.

A. "In one dram". No, that is "minutes". This is "q" in there. I suppose that is "qq", meaning 1 dram for 50 minutes. I would take it to be that. Isn't that "first dose"?

Q. That might be.

A. I don't know.

Q. Well, that refers, doesn't it, to this dose of caroid?

A. Caroid.

Q. That is the way in which this dose of caroid should be taken?

A. That would be the natural way to take it.

Q. Turn to the next one?

A. "Sod. Phos. 1 Oz. after stomach"—well, gentlemen, I can't read it.

Q. You know what sodium phosphate is, don't you?

A. Well, there is a modification of it. "Sod. Phos. 1 Oz. after stomach is well settled".

Q. Sodium phosphate, 3 drams after stomach is well settled?

A. No, that is one ounce.

Q. After stomach is well settled? Is that what it says?

A. I don't know.

Q. You do see sodium phosphate, don't you?

A. Yes.

229 Q. What is that used for?

A. It is a laxative.

Q. It is a little stronger than epsom salts?

A. No. Weaker, and you wouldn't give an ounce of epsom salts, would you?

Q. In the case of alcoholism you might give it.

A. I never have.

Q. But in alcoholism you give more than otherwise, do you not?

A. More than what?

Q. I say that in the case of alcoholism, you give more of epsom salts or sodium phosphate than you would in other cases?

A. No, I don't use it at all.

Q. You know, do you not, Dr. Foxworthy, that epsom salts are frequently given to cure an alcoholic condition?

A. I wouldn't call it "cure". It might relieve the lower bowel.

Q. It is used to relieve the condition, is it not?

A. To relieve the overloaded bowel.

Q. To relieve the condition caused by alcohol?

A. The overloaded bowel only, it doesn't have any effect on alcoholism. I am coming back to his request: "Ice cap to epigastric constantly". The next I think is "urinalysis stat." Is that far enough?

Q. I think you have gone far enough, Doctor, would you mind taking the stand?

A. All right.

230 Q. Well, now, when did you first get in touch with Dr. Howell, that you know of, after you began treating Mrs. Just?

A. When did I first get in touch—you mean by 'phone?

Q. Well let it be 'phone or face to face, sir, either way?

A. My recollection is not definite about the face to face proposition. I was thinking at one time that I might have seen him that night, but I do know that he and I were together probably two hours the next morning and I did get in touch with him by 'phone in the meantime, but as to the exact time, I can't tell you positively; I was trying to save the patient's life.

Q. Did I understand you to say that you thought, on March 2nd, you did get in touch with him on the telephone?

A. I think so.

Q. You are not sure?

A. I am not sure of anything.

Q. You are not?

A. No.

Q. Do you think that you got in touch with him face to face on March 3rd?

A. I know that.

Q. You are sure of that?

A. Yes.

Q. Where did that meeting take place?

A. On my front porch.

Q. Your front porch?

231 A. Yes.

Q. Did you send for him?

A. I may have.

Q. You can't be sure of that?

A. I am not sure.

Q. It is that you do not recall it, is that it?

A. I know we met; that is certain.

Q. And you had a talk about the case?

A. Yes.

Q. That talk occupied two hours?

A. Approximately.

Q. You occupied a full two hours talking about this case?

A. I said approximately.

Q. Does approximately mean not less than an hour and a half?

A. It might be one hour or it might be two and one-half hours. What difference does it make? We consulted. I kept him on the case. Dr. Harris recommended him so I kept him on the case and talked with him.

Q. Let me understand you now, sir. You say you kept Dr. Howell on the case?

A. I was put in charge of the case.

Q. Please answer the question, sir. You say you kept Dr. Howell on the case at Dr. Harris' recommendation?

A. I did.

Q. Who asked Dr. Harris to get into the case?

232

A. Dr. Howell, I understand, had called Dr. Harris before.

Q. In other words Dr. Howell asked Dr. Harris to come into the case? Dr. Howell asked Dr. Harris to come into the case to assist him. Correct?

A. I didn't ask him what for, but of course he called him for consultation.

Q. Exactly; so that Dr. Howell could consult with Dr. Harris. Is that right?

A. Why, sure.

Q. And then Dr. Harris spoke to you, and said "I want Dr. Howell to stay on the case", and you said "yes"?

A. That is approximately correct.

Q. It is what correct?

A. Approximately correct.

Q. Well, if there is anything incorrect about it, I want you to tell me now.

A. In the first place, the doctor in charge of the case has to be put in charge of the case by someone. Miss Bischoff put me in charge of the case.

Q. I understand without you repeating it, that someone has to be in charge of the case?

A. Yes.

Q. I am trying to find out who was.

A. All right.

Q. Now, at this conference which took place
233 on your front porch, which may have lasted one hour, two hours and a half, or possibly less than an hour (and you tell me if I am wrong), you did nothing except discuss the case, is that right?

A. We talked about Mrs. Just's case entirely, and there wasn't anything else to talk about but her case, that is the reason he was there. Some other subject might have been mentioned; that is true.

Q. I see, that is all. Now after that did you have any further conferences with Dr. Howell?

A. I had a number of conferences following, and I may have seen him, I don't remember. May I go into a little bit of testimony on what—

Q. I would be perfectly willing for you to do so if you would first answer my question. I want to know whether you had any conferences with him that you know definitely about?

A. We had conferences over the 'phone.

Q. On the 'phone?

A. Yes, and I am trying to explain it to you, sir, that Dr. Howell was suggested by Dr. Harris, or maybe at my suggestion. I don't remember who did so, but I was to see the case in the morning or in the day and he was to take care of my work at night.

Q. Who was to take care of your work?

A. Dr. Howell was to take care of Charlotte so I wouldn't have to go to the hospital at night.

Q. And in that sense he was assisting you?

A. Well, we were associated together; it is immaterial what word to use.

Q. Please let me know, sir. You say you
234 were associated together. Do you mean when you put it that way, to deny that you had charge of the case and that he was working for you?

A. I stated that once.

Q. Now which is it?

A. I said that I had charge of the case. Your records should show that. Why bother me with that? I wanted to get the girl well.

Q. We will get to that. Now, did you have some conferences in the hospital, not over the telephone, and

if you did have them, tell me on what dates if you can?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Now, don't you remember this, sir: That Dr. Howell, as soon as he found you were issuing orders in the case, objected to your further interfering in his treatment of the case?

A. Your Honor, may I ask for a little explanation of that question; I don't understand it.

The Court:

I think the question is plain, whether there was any disagreement between you and Dr. Howell about the treatment?

A. The disagreements out there were slight, but the case got well; that was the main thing.

Q. Read him the question.

235 (Thereupon the preceding question was read by the Reporter as follows:)

Q. Now don't you remember this, sir: That Dr. Howell, as soon as he found out you were issuing orders in the case, objected to your further interfering in his treatment of the case? You don't remember?

A. He may have done so. I don't remember.

Q. Do you mean that such a circumstance could escape your mind in the space of a little over a year?

A. I have answered the question once, I believe.

Q. Well I am trying to test the credibility of your statement, sir. I will ask you to answer the question.

A. I said I don't remember.

Q. And that is all you care to say?

A. Yes.

Q. Don't you remember this: That Dr. Howell said "you would either stop interfering with his treatment of the case or he would withdraw"?

A. I don't remember that.

Q. Don't you remember that you were countermanding the orders which he was giving?

Mr. Mayne:

I don't think that is proper cross examination. He is assuming certain things not in evidence. He can't ask this witness what Dr. Howell might testify to. He can ask Dr. Howell whether those things happened but he can't ask this witness what Dr. Howell did, so far as this witness is concerned.

236 Mr. Parmer:

I can ask this witness what came to his attention.

Mr. Mayne:

You didn't ask that.

The Court:

I think the question is proper; he is asking what was done between him and Dr. Howell; he is not asking what Dr. Howell independently did in the treatment. The objection is overruled.

A. It may have been that I stopped certain drugs or something like that, it is true; I had that power.

Q. Whether you had the power or not, did you do it?

A. May have done it.

Q. Do you remember that you did?

A. I said I didn't remember.

Q. The time to which I refer, sir, was during the five days that Mrs. Just was in the hospital and when you were engaged in treating her and so was Dr. Howell.

What I want to know is during that time; did you countermand, or did you not countermand some of the orders which were given by Dr. Howell?

A. I may have done so. I can't remember any unusual order; I can't remember any individual order; that is impossible.

Q. That is, you can't remember if you did that?

A. I can't remember definitely, no.

Q. All right. Do you remember, or did it come to your attention in any way, that Dr. Howell objected to that?

A. It might have, just offhand now, I can't remember any individual case. I know that Miss Bischoff and I were in constant consultation daily with regard to the case.

The Court:

You are asking him what?

237 Mr. Parmer:

If Dr. Howell objected to Dr. Foxworthy countermanding his orders?

The Court:

In a conversation with Dr. Foxworthy?

237 Mr. Parmer:

Yes.

A. I don't remember that at all.

Q. Now, sir, do you remember an occasion during those five days, when you came to Dr. Howell, and you said to Dr. Howell in words or substance: "I don't want you to object to my continuing with the treatment of Mrs. Just, there is no reason why we two doctors could not work together; this is a case where I am going to recommend to Mrs. Just and her aunt that a suit be

brought against Henry Yeiser and his insurance companies, and there is a likelihood of collecting a great amount of damages and that we as doctors can participate in the recovery." Did you approach Dr. Howell and say that to him?

A. I did not.

The Court:

Now where do you aver that the conversation took place, Mr. Parmer, that you refer to?

Mr. Parmer:

In the hospital.

The Court:

On what date?

Mr. Parmer:

The date, according to my recollection, as I understand, was on the third or fourth day after she was there. If you wish me to be more precise, I will step out in the hall and find out.

238 The Court:

I think that is sufficiently definite. He has already answered it.

Mr. Mayne:

It would be about the 5th or 6th of March?

Mr. Parmer:

Just about.

Mr. Mayne:

All right.

Mr. Parmer:

Q. Do you remember that you had some conversation with Dr. Howell about getting together on the case and not opposing each other?

A. Well, Mr. Parmer, I don't remember your suggestion like that, at all. I wanted harmony, of course. I try to get harmony every time I go into consultation.

Q. Well I want to know whether there was a conference between you and Dr. Howell in order to bring about that harmony?

A. We had a conference, it is true, on my front porch; of course, it was harmonious.

Q. Was the purpose of that conference, as you understood it at the time, to bring about harmony which was absent before the conference?

A. Why certainly it was to promote harmony.

Q. Was it to promote harmony by reason of any absence of it before?

A. Not necessarily.

Q. Sir, was it at all, never mind "necessarily"?

A. I had never seen the man before.

Q. I didn't ask you that. I am asking you whether the purpose of this conference which you say took place on your front porch, was to produce harmony which was absent before the conference took place?

A. It was for harmony only.

Q. Did you want to produce harmony because there was no previous harmony before?

A. I always want to produce harmony.

Q. Will you answer my question.

A. I understand what you are driving at.

Q. I want to know whether, according to your understanding before this conference took place, there was some trouble between you and Dr. Howell?

A. Would you undertake to—

The Court:

I think, Doctor, it would be better if you didn't ask Mr. Parmer any questions. If you want to explain something after an answer, you can do so, but you are not allowed to ask Mr. Parmer any questions.

A. May I explain, please, sir?

Q. Of course you can explain.

A. I want to say what Dr. Howell—

Q. Answer the question first.

A. I want harmony in every case, why not? I had never seen the man before. Why should I want harmony?

Q. I understand that of course you wanted harmony but I am asking you, sir, whether before you had the conference you knew that there had been some trouble between you and Dr. Howell?

A. There has never been any trouble between me and Dr. Howell.

Q. That is the answer?

A. Sure, why didn't you ask me in the
240 first place?

The Court:

I think you provoke argument by your comment on answers.

Mr. Parmer:

I am sorry, it is a bad habit; I agree with you.

Q. Doctor, before you came to Miami, you had engaged in what you call insurance medicine?

A. Yes.

Q. And that included accepting retainers and doing work for insurance companies which were engaged in defending on behalf of insured people suits on account of personal injury?

A. Mr. Parmer, insurance medicine, may I explain, please, sir, is not all legal; you know it is not all Court cases. I have acted as medical examiner and as medical referee to the medical director in my younger days; I didn't get into very many of the large cases but I was acting as medical director and medical examiner and that is insurance medicine. Later on, I have been doing work for three insurance companies.

Q. Are you through, sir?

A. Yes.

Q. Now, will you tell me, while you were in Miami, were you engaged in the practice of insurance medicine?

A. I have done some insurance work here.

Q. Did you say on your direct examination that while you were in Miami, that you represented or did work for 70 insurance companies?

A. Yes.

Q. In connection with that work, did you do
241 work for insurance companies which were insuring people against liability on account of personal injury?

A. Yes; this was life insurance.

Q. Do you mean by that, that all of your work in Miami was done on account and for insurance companies?

A. Well, I think so. Now I am not sure about that. I have been employed by so many companies I have forgotten them.

Q. Well did you make examinations in connection with cases which were being prepared for trial?

A. What kind of cases are you talking about?

Q. Well, tell me first whether you made examinations in connection with any cases which were being prepared for trial?

A. I am talking about life insurance. I am not talking about disability insurance at all; I am talking about life insurance.

Q. I appreciate that you are, sir, but I want to know whether you did prepare for testimony in any cases that went to Court?

A. I have been in Court before. I don't remember the exact cases though; I will be glad to furnish you with that information.

Q. Thank you. What I want to know now is whether you did in any one case, examine somebody and that case was a case in which someone was claiming damages on account of personal injuries?

A. Whether I examined a case for personal injury? Do I understand you right or not?

Q. To be perfectly precise, whether you examined on behalf of an Insurance Company, some person who had been injured as a preparation for a case which was being maintained to recover damages on account of that personal injury?

A. Mr. Parmer, I have examined lots of cases that have been disabled; they may have taken it in Court later on and I may not know about it. I have examined lots of disability policies with a disability clause.

Q. You are referring now to a disability clause in life insurance policies?

A. Yes, indeed.

Q. I am still trying to find out, sir, whether any of your examinations were in connection with people who had claims, made suits against an insured covered by an insurance company for whom you were working?

A. Well, if I get you, Mr. Parmer—I am awfully dumb—I am sorry. Do you mean by examining, to prepare a case for Court, or not? Is that your idea or what?

Q. My idea, sir, is simply this: You know what a Court case is, you know what that is, don't you?

A. Sure.

Q. All right. Do you know what a case is, where one person sues another for personal injuries?

A. Of course.

Q. And you know the situation where the defendant is covered by an insurance company, don't you?

A. Yes.

Q. And you know that in the process of
243 handling that claim, or if it becomes a suit, handling the litigation, the Insurance Company wants to find out how badly injured the plaintiff is?

A. Yes.

Q. And in the course of its business, the Insurance Company will demand and obtain a physical examination of the plaintiff, you know that, don't you?

A. Oh yes.

Q. And in order to obtain that, they will employ a doctor, you understand that?

A. Yes, sir.

Q. What I want to know is whether you were that doctor?

A. I have told you that I have had several hundred cases of disabled people, but whether they got to Court or not, I do not remember any individual case now.

Q. I didn't ask you whether they got to Court or not. I want to know whether there was any such situation that you were ever hired by the Insurance Company to make such examination?

A. I don't remember a single case of that character.

Q. Were you ever appointed by a Court to conduct a physical examination of a plaintiff in a damage suit?

A. Plaintiff in a damage suit?

Q. Yes.

A. I have been appointed by the Court a number of times as to whether infection resulted or something like that, or whether the man was as sick as they thought he was, but I don't remember being appointed by the Court in such a situation as you describe.

244 Q. I did not describe any particular situation. I just asked you whether it was a suit pending for damages and the Insurance Company interested in the suit petitioned the Court for a doctor to examine the Plaintiff?

A. I may have done so.

The Court:

By order of the Court?

A. I don't remember exactly. I just don't remember exactly.

Q. Honestly, you mean?

A. I should but I don't get it through my head; any single case I have been in of that character. You may be able to dig up some cases against me, I don't remember at all.

Q. You are perfectly safe. I won't.

A. Thank you.

Q. Well, now, did you advise Mrs. Just, or her aunt, while she was here, to bring suit against Mr. Yeiser?

A. I did not.

Q. Did you advise her to bring a suit against the Insurance Company?

A. I did not.

Q. Well tell me, Doctor—when you saw Mrs. Just you say she was having a movement of the bowels?

A. Yes.

Q. Well now, would the sodium phosphate that Dr. Howell ordered for her, produce that?

A. Well now what would produce that, I don't know.

245 Q. I said would it produce that, sir? Will you please answer my question?

A. Yes.

Q. Would sodium phosphate produce a movement of the bowels?

A. It usually does. Of course, if taken in sufficient quantities.

Q. If taken in sufficient quantity?

A. Yes.

Q. I think you said that the quantity down there was certainly sufficient to move mountains?

A. I didn't say mountains.

Q. I am putting it figuratively.

A. All right.

Q. Did you say, on direct examination that Mrs. Just was bluish?

A. She had a pallor,—a bluish color.

Q. Where was she bluish?

A. Oh, around the face.

Q. And the lips?

A. Just the ordinary pallor that comes after a person has been vomiting severely.

Q. Well now, Doctor, I think we both know
246 the difference between pallor and bluish—you appreciate that there is a difference, do you not?

A. I do. I prefer to say pallor; often it is whitish tinted and often it is whitish with a bluish tint; that's true.

Q. Whitish with bluish tint?

A. It may be.

Q. I would like for you to tell us just what it was in Mrs. Just's case; tell us where she was bluish and where she was whitish?

A. My general impression was that it was just the face; I didn't specify any individual spot. I was interested in keeping her alive and things like that.

Q. You mean to say that you cannot tell us where she was whitish or bluish?

A. I said her face.

Q. You mean part of her face was white and part bluish?

A. Her face.

Q. My question, sir, was do you mean that parts of her face were white and parts blue?

A. The general impression I got was an ashen pal-
lor, or bluish tint of the face.

Q. Of the whole face?

A. I don't want to specify any individual part.

Q. Did you notice the lips?

A. Of course, but what my observation was I cannot remember offhand.

Q. You can't remember, but the general impression was—

A. She was clammy; that is the usual condition where the skin is cold and perspiration has taken place—it is clammy to touch.

Q. Cold and damp, is that what that means?

247 A. Yes, sir.

Q. Have I outlined all that you can remember about how she appeared when you looked at her for the first time; that she was clammy, that she had a bluish-white color to her face. Is that all you can remember?

A. No, there are other things.

Q. You tell us the other things you can remember?

A. You must understand that the first thing of all when I saw the case was to take care of the exact situation as it appeared. The coffee enema had moved the bowels; the thing that moved the bowels was the enema of black coffee—

Q. Will you please answer my question.

A. She was unconscious.

Q. She was unconscious: what else?

A. Her pulse was weak; her respiration was weak.

Q. Pulse weak?

A. Yes.

Q. When you say it was weak what do you mean?

A. The quality.

Q. Do you mean when you say it is weak in quality that it is difficult for a doctor to perceive it?

A. By touch.

Q. Of course that is the way you find it?

A. Yes, sir.

Q. Then when you put your hand on her wrist it was hard for you to tell it; right?

A. Yes.

248 Q. Is that what you mean?

A. I mean that the quality of the pulse is the amount of blood flowing through it, the feel of the pulse; in other words, it is its slowness or rapidity that I am talking about.

Q. You mean that it is weak in the sense that it is difficult for you to feel it by palpation?

A. Yes, exactly.

Q. How was the pulse with respect to rapidity?

A. My memory is in doubt about that. Your chart will show it there.

Q. Where did you look at the chart last?

A. You mean this chart here?

Q. This one, the one in evidence that you just referred me to.

A. I haven't carefully examined that chart for some time; I do not remember exactly when the last time was, but the quality of the pulse is what I meant. The rapidity is not so important.

Q. Let's not argue about it.

A. All right.

Q. I understand that you have added "unconscious" to the weak pulse and the matters that I mentioned?

A. Yes. My recollection is that the blood pressure was lower than normal.

Q. Lower than normal?

A. And the temperature might have been sub-normal.

Q. Do you have any recollection of what it was?

249 A. My recollection is that the temperature was slightly sub-normal. At different times it was above normal.

Q. I just want to know what it was when you first saw her.

A. That is my recollection.

Q. Slightly sub-normal?

A. Yes.

Q. Now in a woman what is the temperature that is slightly sub-normal?

A. What is your idea of normality?

Q. I want you to tell me, doctor.

A. From one to say five over ten is slightly below normal.

Q. Five over ten is below normal?

A. Yes.

Q. Is slightly sub-normal?

A. Yes, sir. It is a minor thing really and truly when it comes to a patient's life.

Q. As a matter of fact pulse temperature differs within the limits that you mentioned?

A. Yes; that is the reason I said slight.

Q. What would be a low blood pressure in a woman?

A. To answer your question as to what would be a low blood pressure in a woman would depend on a number of factors. I suppose you mean normal blood pressure, because most women are normally lower than men, from five to ten degrees lower.

Q. What blood pressure is normal in a woman the age of Mrs. Just?

250 A. At her age and her build and all it would probably be, you might say, 112 or 115 maybe, but not as much as a man as a rule.

Q. Her normal blood pressure would be 115?

A. It might be.

Q. And it might be somewhat higher?

A. Of course it might be higher.

Q. And still be normal?

A. Very true, Mr. Parmer, but I want you to—

Q. I want you to answer the question, sir.

A. Authorities differ on that. I want to discuss the normal blood pressure with you because authorities—

Q. You rather withdraw the answer that you made, that her blood pressure was low?

A. I didn't say low; I said it was slightly lower than normal.

Q. We will take it that way.

A. All right.

Q. Do you want to withdraw that answer?

A. No.

Q. Let's find out what you mean by low blood pressure in the case of a woman of Mrs. Just's age; let's find out what is the normal blood pressure; what are the limits for normal blood pressure for a woman of Mrs. Just's age?

A. Probably from 110 up to 120. I am talking about systolic.

Q. I understand.

A. I wouldn't worry about either one.

Q. It could go up to 130, couldn't it?

A. Not necessarily at her age.

Q. It could go up to 125?

251 A. I would rather not put any further answer to that.

Q. You have heard of the old rule of 100 plus your age?

A. Yes, that is a very old rule.

Q. Is that rule wrong or—

A. It is not used nowadays.

Q. It is wrong then?

A. It just isn't used.

Q. Could it have been below 110 and still be normal?

A. I have answered that, Mr. Parmer, and I do not care to go into it any longer.

Q. All right; was there anything else that you noticed about her condition?

A. There may have been other things but I have forgotten.

Q. You have forgotten?

A. I have already put them on the chart; they are there on the chart.

Q. Now, doctor, I want to know which of these symptoms that you saw at the time and that you can remember now indicated to you that Mrs. Just was suffering from carbon monoxide poisoning?

A. Which of the symptoms?

Q. Yes.

A. In the first place I didn't see Mrs. Just when she was poisoned; I didn't see her until hours afterwards, and necessarily you understand that it was too late to make any tests on Mrs. Just that are usually made. It is true she had urinalysis made and she had her blood pressure taken and she had a blood examination made, but it was too late to do these things that should have been done at the start. I said "should", but I will say that is usually done.

Q. What test, sir, by which you determine whether a person—

A. Let's not go into that; let's not go into chemistry, as I am not an expert on that, but I will be glad to read it to you.

Q. Do you know what is the test to determine whether a person is suffering from carbon monoxide poisoning?

A. I happen to know that but I am not an expert on it.

Q. Do you know it?

A. Yes. Anybody that ever treated a carbon monoxide case would know the ordinary tests, and I can refer you to all the authorities you want.

Q. I don't want to find out what the authorities know. I want to find out what you know and I would be obliged if you will tell me right now.

A. I am not qualified as an expert at all.

Q. Do you mean to say that you don't know?

A. I know it, and I am simply telling you that—

Q. Please tell us.

A. The simple test is to take a test tube with water in it and blood, and when you shake it you get a bright cherry-red color, and that partly disappears according to some authorities in two hours, some less and some more than that. I am not qualified as an expert on that. These things I pay other people to do for me, but it was too late when I saw Mrs. Just.

253 (By Mr. Parmer):

Q. The way you understand the test is made is to take some blood, put it in a tube and add water to it and shake it?

A. If Your Honor please, there are five different kinds of tests. I don't want to go into that; I am not a chemical expert; I can refer him to authorities.

Mr. Mershon:

We object to that line of examination. because it is immaterial and irrelevant.

Mr. Parmer:

It is not at all.

Mr. Mershon:

I submit, Your Honor, that the question does not relate to any tests which may be made eight to ten hours after the victim has been discovered. Now the test that Dr. Foxworthy mentioned was one that must be made while the carbon monoxide is still in the blood or before eliminated to some extent by the use of oxygen and the other methods.

Now if counsel will limit his question to tests that may be made after the time Dr. Foxworthy saw the

patient, I think it is relevant here on cross examination, otherwise any examination about tests is irrelevant and not proper cross examination unless it refers to tests that could be made at the time Dr. Foxworthy saw this patient.

Mr. Parmer:

Of course I am referring to the tests which were possible.

Mr. Mershon:

And it is irrelevant here because no tests were made; there is no evidence of the making of any tests whatsoever.

254 The Court:

I understand Dr. Foxworthy to say that it was too late to make certain tests, and then on top of that Mr. Parmer asked him what are the tests to discover whether the patient is suffering from carbon monoxide, and he says he knows the tests but he prefers not to go into it, and Mr. Parmer insists that he give what the tests are. He has given one.

The Witness:

Your Honor, I am simply trying to avoid going into an expert chemical analysis and all of that stuff. I am no chemist. I employ people to do that for me. It requires formulae to work these things out. I know it, but why go into it; I am no expert on that.

Mr. Mershon:

Let him state the general nature of the tests.

The Court:

Yes, but it makes his answer seem incomplete when he says, "I know it but I prefer not to go into it"; then

when Mr. Parmer asks him to give it he says he prefers not to go into it. If he can describe it I think he should; if it is something that leads into an intricate analysis of chemistry that we don't understand—

The Witness:

It does, Your Honor.

The Court:

What are the tests?

The Witness:

There are various tests.

255 The Court:

What are they?

The Witness:

(By Mr. Parmer):

Q. You knew that much about all of these tests but you say it was too late to perform them. Did you know that much?

A. How much?

Q. That at the time you saw the patient it was too late to perform them?

A. I would not say all of the tests, because we ordered a blood analysis and urinalysis.

Q. Do you know any of the tests which could have been performed when you saw her, notwithstanding the time which had elapsed?

A. These tests should have been made at the very first, consequently, if they are not made it is too late, because the carbon monoxide has left the blood.

Q. Do you know any tests which could have been performed by you at the time you saw her to determine whether she had carbon monoxide in her blood then?

A. Some of those tests could have been used even to the extent of ten days or more; the spectroscope probably would.

Q. You say the spectroscope could be used ten days afterwards?

A. Probably.

Q. Do you know definitely?

A. No, I don't know definitely.

Q. Do you know—

A. I am not a chemist; I told you that—

Q. Is your answer that you don't know because of not having read it or you don't know of any test which could have been used at the time that you saw her to determine whether she had carbon monoxide in her blood?

A. I do not remember any tests that would be always true at that time.

Q. Did you form an opinion at the time you examined Mrs. Just on the first day that her condition was the result of carbon monoxide poisoning?

A. I did.

Q. Did you form that opinion from an examination of Mrs. Just?

A. Partially.

Q. Partially?

A. Yes, sir.

Q. And partially from the record which had been made by Dr. Howell?

A. Partly.

Q. Those were the two things—

A. I concurred in his diagnosis, if you will read the record, of carbon monoxide poisoning.

Q. But it is written carbon dioxide, is it not?

A. I think I read that "carbon monoxide". I may be wrong about it. Sometimes doctors slip a little bit.

Q. Perhaps it was a slip, sir, but did you slip in reading it, sir, that it was CO₂?

A. I don't see CO₂. I thought you were reading down here in the body (indicating).

Q. All right, let's look at the body, sir, over in the light.

A. I think you will find it here (indicating).
Q257 That looks like "CO₂" up there.

Q. Now do you see this here (indicating); will you read that?

A. It says "apparent".

Q. Apparent what?

A. "Apparent CO₂", which he evidently meant. What is this word here—is it "poisoning"?

Q. It seems to be, sir.

A. Some of these words here I can't read distinctly, but I am sure I spelled—

Q. You were reading on page 9?

A. I don't believe it was that far back.

Mr. Mehrtens:

I can find it for you, I think, if you will let me.

The Court:

All right.

Mr. Mehrtens:

Here it is right here (indicating).

Q. Right here (pointing).

A. You see he has "mono" spelled out.

Q. Will you just take the stand again?

A. All right.

Q. That, sir, is a note by Dr. Harris, is it not?

A. Yes.

Q. Which was not there at the time you came in to see Mrs. Just on the first day?

A. I suppose that was Dr. Howell; I am not sure of his initials; does it show who it is?

250 Mr. Mayne:

We will concede that it is Dr. Harris.

Mr. Parmer:

Counsel concedes that Dr. Harris was the doctor writing "carbon monoxide".

Mr. Mayne:

We will concede that it is Dr. Harris' handwriting.

(By Mr. Parmer):

Q. Dr. Harris saw the patient after you did, isn't that so?

A. Yes.

Q. So you did not have the benefit of Dr. Harris' statement that it was carbon monoxide poisoning at the time when you came to your conclusion that it was carbon monoxide, did you?

A. No.

Q. And all that you had was something written by Howell and all he had written was "carbon dioxide", is that right?

A. No, sir.

Q. Well, let us see—

A. You assume you too much. I did not make my diagnosis from that chart at all.

Q. You didn't even see it?

A. I did not say that. You are putting words in my mouth. I talked my diagnosis over with Dr. Howell, by conference with Dr. Howell, and he agreed in it; don't you see you are putting words in my mouth?

Q. Do you mean to say that on March 2 when you went and examined Mrs. Just in the hospital you came to the conclusion that she was suffering from carbon monoxide poisoning as a result of a conference held with Dr. Howell that day?

A. Partially.

259

Q. Partially?

A. Yes, I checked though before.

Q. Didn't you tell us already that the conference that you held with Dr. Howell was on the next day?

A. Well, now you are getting me confused as to what days you are trying to—

Q. You may be getting confused, but I am not doing it.

A. You are doing it. I have told you distinctly, but if you will stop trying to confuse me, stop trying to mix me up, and will look at your record, you will get what you want,—

Q. What I am trying to find out is you say that you came to the conclusion on the first day you saw this woman, came to that conclusion?

A. Yes.

Q. That she was suffering from carbon monoxide.

A. I did.

Q. And you say you were aided in that conclusion by examining Mrs. Just and by something that Dr. Howell had said; right?

A. Yes.

Q. Now I want to know whether you had had a conference with Dr. Howell at that time or not; had you?

A. Well, now what do you mean by "that time"?

Q. At that time you completed your examination of Mrs. Just and came to the conclusion that she was suffering from carbon monoxide.

A. I told you I had my conference the next morning.

Q. Therefore the only contact you had with Dr. Howell's opinion in the matter was that contained in the record which he had made?

A. No, not at all; you forget that I talked with him over the phone.

Q. Are you sure that you did?

A. I think I did; I am not sure of anything, but I am sure as far as I can remember.

Q. Then you think you had a 'phone conference with him?

A. Yes.

Q. And you are sure you had a 'phone conversation with him?

A. I am sure that I did. I was worried about getting Charlotte back to life, and I was doing my best, and the 'phone may have been busy; my wife tried to get him by 'phone—I know that.

Q. You could not have had the 'phone conversation with him at all—

A. We had it.

Q. On the day that she went to the hospital?

A. Yes, but let's get back to the patient.

Q. What does a person look like when they have been overcome with carbon monoxide gas?

A. You are not referring to this case at all?

Q. No; when they come out of a place where carbon monoxide is, come out unconscious.

A. You want to know their symptoms?

Q. I want to know what their appearance is when they come out unconscious.

261 A. When they come out unconscious quite often there will be red spots on the face, even the body at different places, and the pupils of the eye may be dilated or not.

Q. Or not?

A. Yes; they may be dilated or not. Of course there is a headache that goes with it, but if the patient is unconscious he wouldn't know it necessarily. Some of them have garlic odor on the breath.

Q. In speaking about the appearance did I understand you correctly that sometimes there are red spots and sometimes they are not?

A. Yes.

Q. And sometimes there is pallor and sometimes not?

A. Yes.

Q. Is there anything about a person who is overcome by carbon monoxide gas which stands—

Mr. Mehrtens:

Counsel is asking for symptoms here. If counsel will make his question a little more specific perhaps the doctor can give him a little more specific statement.

Mr. Parmer:

I certainly could not be more specific when I asked the doctor to assume—

Mr. Mershon:

We object to the question, if Your Honor please, that the question is not specific.

The Court:

I will overrule the objection. I think the question is proper. That will be a matter for re-direct examination. You may proceed.

262 Mr. Parmer:

I do not quite understand you.

The Court:

I am allowing you to ask the witness questions as to the physical appearance of a person affected with this gas.

Mr. Parmer:

Then you allow me to—

The Court:

To test his knowledge of carbon monoxide and its affect on the human body from a hypothetical standpoint.

Mr. Parmer:

Very well.

The Court:

But he has said in his examination clearly that when he examined her these tests could not be made, that the time element prevented it. Now then your last question was apparently directed to ask him why the conditions which he explained existed hypothetically were not present at the time of his examination.

Mr. Parmer:

That is what I was leading up to, Your Honor. The first thing I want to find out is whether he would agree that in every case of unconsciousness—

The Court:

You may proceed along that line.

The Witness:

They surely have red spots.

(By Mr. Parmer):

Q. I want to know from you whether they usually do or whether they always do.

A. I haven't seen all of them.

Q. And if they are that way how long does that condition continue?

A. Sometimes fifteen minutes and sometimes longer.

Q. It varies?

263 A. It varies, but not very long.

Q. Have you in your experience treated or seen cases recently exposed to carbon monoxide gas?

A. I have.

Q. How long have you seen them after the exposure ended?

A. How soon have I seen them after the exposure ended?

Q. Yes.

A. I don't understand you. What are you driving at?

Q. I mean how long after a person came out of the place where they were being affected by carbon monoxide gas did you see them first?

A. I am sorry; I am awfully dumb; are you talking about red spots now or when I saw the patient?

Q. I am asking you how long after a person who has been exposed to carbon monoxide gas has been removed from the atmosphere where the carbon monoxide gas was did you see the patient?

A. Sometimes I have seen them within ten minutes. I had one case right across from my place and I saw that patient inside of ten minutes.

Q. And in that case was the person red?

A. I don't remember.

Q. Well, did you ever see any person who had recently been exposed to carbon monoxide gas after being unconscious whose complexion was red?

A. Yes.

264 Q. And that person in that case,—how long after the exposure to carbon monoxide gas did you see the person?

A. That has been sometime ago; I don't remember the exact time, but it was a question of minutes; it wasn't very long.

Q. Well, was it an hour afterwards?

A. It may have been.

Q. It may have been two hours?

A. It may have been two hours.

Q. You do not have any definite recollection of that at all?

A. I do not have any definite recollection of that at all.

Q. Now, Dr. Foxworthy, when you were treating Mrs. Just in the hospital did you give her some sedatives?

A. I did.

Q. What sedatives did you give her?

A. The records will show you.

Q. If the records will help will you please use them?

A. I would rather tell you first now and save time.
Both Dr. Howell and myself—

Q. I asked you what sedatives did you give to her, leaving Dr. Howell out of it, please.

A. Luminol was one. I think I am right in saying that at different times I used sodium bromide, but whether it was at the hospital or at the house, I don't know; in fact her headache was so severe that I maybe used morphine once or twice; I may have used some other sedatives that did not have a good effect, and I may have used some phenol barbital, I think it was, but
265 all of this should be on the hospital chart.

Q. You favored strongly the use of sedatives in this case, did you not?

A. Yes, indeed.

Q. You also favored very strongly the use of sedatives in the case of Miss Grunow?

A. I favored it; I didn't favor it strongly; I made the suggestion that she take it.

Q. Did you prescribe sedatives?

A. I did prescribe sedatives, yes.

Q. Now in your treatment of Mrs. Just after she left the hospital you say that she had recovered from her aphasia that she showed in the hospital?

A. Yes.

Q. I think you said by that you meant she had recovered speech?

A. Oh, yes.

Q. In other words in using the words "aphasia" you mean that she had some impediment which prevented her from speaking, is that correct?

A. I explained that this afternoon. It is a cerebral matter; the trouble was in the central nervous system, causing the impediment of speech; the trouble would be the central nervous system.

Q. What you mean by "aphasia" was something wrong with her speech, is that correct?

A. Aphasia and afono are both loss of speech, 266 aphasia being due to the central and nervous system region.

Q. I want to know about aphasia. Did you use the word aphasia to mean loss of speech in any respect?

A. I did.

Q. Is that what it means?

A. Sure; not in any respect, but just in one respect.

Mr. Mershon:

I will ask the Court to instruct the counsel that the witness wants to explain what he means by "afono" without interruption of counsel.

The Court:

All right, do that, Doctor.

The Witness:

It means loss of speech due to a lesion in the central nervous system.

The Court:

Is that all you want to explain about that?

The Witness:

Yes.

(By Mr. Parmer):

Q. Did you ever hear it used to mean lack of memory?

A. Lack of what?

Q. Lack of memory?

A. No, sir.

Q. Now did Mrs. Just object continually to the examination you were making of her?

A. She was irritated by them; everything irritated her.

Q. Did you say she could not understand why this treatment was going on?

267 A. She was irritated by everything; she would not understand it, and that would be taken for granted.

Q. Did she object to being under medical care?

A. More or less, yes.

Q. Did she say she didn't think she needed it?

A. Oh, I don't remember that at all.

Q. Well, you mean to say that she didn't say that?

A. I don't think she did.

Q. Now you wanted to remove her to the hospital, didn't you?

A. Yes.

Q. To some institution.

A. Are you referring to the time after she left the hospital?

Q. After she left the hospital and you wanted to remove her again to an institution.

A. At one time there was some danger of her injuring herself, and we thought she would have competent supervision in some hospital or institution where she would be taken care of better.

Q. Didn't you want her to go to the hospital because you thought the relatives in the house there were retarding her recovery?

A. It is characteristic of these cases that they should have rest and quiet, they were in a small house and there wasn't room enough to give her sufficient attention and quiet.

Q. Didn't you have the opinion that it would be beneficial to Mrs. Just if she were not in association with the mother and the aunt in the same house who were too solicitous of her welfare?

A. I recommended her to be sent some place
268 where she would be very quiet and have complete rest.

Q. Didn't you think that the mother and the aunt who were in the same house with her deprived her of the rest that she needed?

A. The mother and the aunt?

Q. Yes.

A. Not necessarily.

Q. Well, Doctor, was that any part of your opinion at the time?

A. It may have been part; she needed rest from everybody like she would get in an institution. I didn't specify any one person. I think she was worrying about the child; I think that probably was the main thing.

Q. That worry about the child was something that she had before she ever went on Mr. Yeiser's boat?

A. Yes, but it was much worse afterwards; that was the one idea in her head.

Q. Now then before she was on the boat she expressed herself in that regard—did she tell you why she thought she might lose her child to her husband?

A. Before she was on the boat?

Q. Yes; when she expressed that idea to you did she say why she thought she might lose her child to her husband?

A. She may have but I have forgotten the details of it.

Q. Did she have a fixed idea before she went
269 on the boat that her husband might take her child away from her?

A. Oh, she spoke of that several times.

Q. But it was not an obsession?

A. No, it wasn't an obsession at all like it was afterwards.

Q. After it became an obsession did she ever tell you why she thought she might lose her child to her husband?

A. She would simply keep asking about it; she wouldn't go into details at all.

Q. Did you try to go into details with her?

A. I may have, but I have forgotten the details now.

Q. You say that that was the main mental trouble with her, was it?

A. What?

Q. This fear that she would lose her child.

A. The main mental trouble?

Q. I don't know whether I expressed it the same way as you did—

A. It was sort of dementia paranoid resentment, and things of that kind.

Q. Maybe so, but I want to know what her main mental trouble was as expressed by her.

A. As expressed by her?

Q. Yes.

A. We did not discuss her mental trouble at all, you know.

Q. I didn't ask whether you discussed it, sir; I want to know what you observed with regard to her mental symptoms.

A. You mean my opinion?

Q. Your observations, sir, and also your opinion with regard to her mental symptoms; was the main abnormal mental system that she feared the loss of her child to her husband?

A. That was one of the main features.

Q. That was one of them?

A. Yes.

Q. Was there any other fear expressed by her?

A. I have heard her say that she feared she would lose her mind; she didn't see the reason for living; she would say, "what is the use of living; she often asked me that question.

Q. She was depressed, was she?

A. Oh, very much.

Q. Did she express herself that she was depressed because she thought she was going to lose her child?

A. That was the probable sequence, of course.

Q. And that she didn't care to live any more because she thought she was going to lose her child?

A. It may have been just like you say it, but she made the statement several times to me that she didn't see any use of living; she might not have mentioned the child in the same breath, but she always mentioned the child every time I saw her.

Q. But from your observing her mental symptoms did you find that all of these abnormal expressions of hers were, as you just stated, sequences, or "sequelae", as doctors say, of the central theme that she feared she would lose her child?

A. There is some doubt in my mind as to
271 whether this whole thing, as you expressed it to me, is right, but it was, of course, one of the main factors, one of the main features, that is, that she would lose her child.

Q. Am I putting it fairly; I am putting it up to you—

A. But—

Q. All I want to ask you is whether I am putting it up to you fairly. I want to know all of the various abnormalities with regard to this woman's mental condition; were they or were they not what the doctors call sequela sequences of the central idea in her mind that she feared she would lose custody of her child to her former husband.

A. That wasn't the central idea; it was one of the main ideas, but you would not say the central idea; by "central" you might embrace the whole subject.

Q. I mean it was the central idea from which proceeded the other abnormal ideas?

A. Not necessarily.

Q. You don't believe it was?

A. Not necessarily. She had a brain lesion there; that might have had something to do with it, but the child was one of the principal things.

Q. You say she had a brain lesion?

A. Yes.

Q. Do you know of any mental symptoms which she did have and which you now remember which could not be regarded as a sequence from the idea she had that she might lose her child? If that is not clear I will make it clear. I don't think you understand me.

A. I don't think it is clear.

Q. I want to know if you remember any mental symptom that—

Mr. Mayne:

You mean before the accident or after?

Mr. Parmer:

After.

Q. I want to know if you remember any mental symptom that you observed that Mrs. Just had which in your opinion was not connected with her fear that she would lose her child?

A. Oh, yes.

Q. Tell us what that was.

A. Lose her mind.

Q. You mean fear of losing her mind?

A. Yes, sir.

Q. What other?

A. Failure of concentration. That is hard to explain, Mr. Parmer; I think she realized to this extent that she wasn't at times talking correctly, and she would repeat herself over and over again. Dr. and Mrs. Kennedy took her to a movie, to try to make her feel better, but she will had the depression afterwards.

Q. Tell us what the mental symptom was that you observed.

A. There wasn't any mental symptom in connection with the movie.

Q. You mean she didn't want to go to the movies?

A. She simply didn't care for the movies; she would go, but after she had been there for awhile she would leave.

Q. What else?

A. There was of course this mental repetition of ideas.

Q. Repetition?

A. Yes, repetition of speech and so on; the same thing over and over again; disassociation of ideas or disorientation. She couldn't drive a car, and things like that.

Q. She was unable to drive a car?

A. Yes.

Q. Or what else, or did you finish?

A. There were probably some others but I cannot remember them; I am getting tired.

Q. I am getting tired too, and I am going to quit. We are all going to be happy in a minute.

A. I hope so.

Q. Did you ever try her out in driving a car?

A. Did I ever try her out in driving a car?

Q. Yes.

A. No.

Q. Did you ever ask that she be tried out in driving a car?

A. Dr. Kennedy and Mrs. Kennedy—

Q. Did you?

A. Not myself.

Q. Did you ever advise that she be tried out to see if she could drive a car?

A. Yes.

274 Q. You advised that?

A. I suggested it with proper persons.

Q. Was the test tried out?

A. I don't remember.

Q. Did you observe that Mrs. Just at times, at certain times, could remember things and at other times she could not?

A. It is possible that I do, but no definite thing comes to my mind at this moment.

Q. Do you remember from your observation of her at that time that the factor of loss of memory was not constant?

A. Loss of memory not constant?

Q. Yes.

A. We tried to improve her memory, and of course she would seem to get better, so there would be probably a change in that regard.

Q. Do you remember a time that she got pretty near well?

A. Sometimes, yes.

Q. Well, sir, the physical effect caused by the combination of carbon monoxide with the blood, hemoglobin of the blood, causes it to become redder, and that is a physical fact, isn't it, in all cases that the complexion becomes redder?

A. Physical?

Q. Yes.

275 The Court:

Well, Mr. Parmer, an objection was made just now to the hypothetical questioning along the lines of symptoms and physical appearances of a person affected with carbon monoxide immediately after the inspection as distinguished from the condition of this lady at the time she was first observed by the witness?

Mr. Parmer:

Yes.

The Court:

So, while the Court has allowed you to pursue the line of questioning in a hypothetical sense, the Court will have to require that when you attempt to apply the answers obtained to hypothetical cases, that you not apply them to the physical case which we have before us. So far as testing the witness' knowledge of carbon monoxide, he has given you his version of that. The Court has allowed you to test his knowledge on that, and you may proceed along that line, but do not draw comparisons from deductions given in his answers to hypothetical questions—in other words, do not apply those answers obtained to the hypothetical questions to the conditions now before us.

Mr. Parmer:

Very well.

(By Mr. Parmer):

Q. You do know something about that, Doctor?

A. Yes.

Q. Is there consistency in the appearance of such persons?

A. Yes; they are often not consistent, as I have already explained.

Q. Now you are telling me that they are inconsistent?

A. Yes.

Q. I want to know where they are consistent.

A. They are consistent when they are unconscious; there is nothing inconsistent about that.

Q. Does carbon monoxide form and combine with the hemoglobin of the blood?

A. Yes.

Q. What is that called?

A. Called carbo-mono. Can I have a glass of water?

(Recess).

Q. Dr. Foxworthy, the name of carbon monoxide fumes when combined with the hemoglobin of the blood is—

A. Yes.

Q. And I think you said it was—

A. Carbo-mono hemoglobin.

Q. What is the color of that content?

A. Bright red.

Q. Now when the blood becomes saturated with carbon monoxide to the extent that it produces unconsciousness, doesn't it produce a bright red complexion?

A. Usually, but within the limit in time as I told you before.

Q. All right, sir, but while the carbon monoxide is in the blood, while it is saturating the blood to the point of producing unconsciousness, isn't the complexion a bright red?

A. In all cases?

Q. In other words, that you—

A. If you want to modify it a little bit, I could answer it. I cannot say definitely that it is in all cases, because it has numerous varieties. In 70 per cent. of the cases there is sugar in the urine—

Q. I am talking about the outward appearance
277 of the person, sir; never mind the internal features. I want to find out the outward appearance of a person when such person is overcome, that is, made unconscious by carbon monoxide gas; what appearance do they have which is consistent in all cases?

A. I am simply giving you my own opinion.

Q. That is what I want to know.

A. I don't know whether it is consistent in all cases, because I haven't seen all cases. Of course, you may understand far better than I do as to what is consistent in these cases.

Q. Maybe I do, sir, but I want to know what you know about it. Do you know anything about it?

A. I don't know; sometimes I think I don't.

Q. Do you know anything about how a person looks when they are made unconscious by carbon monoxide poisoning?

A. Yes. I don't remember offhand any time that she could remember very well—

Q. Do you remember that at times she could remember things that happened on the Yacht Friendship II?

A. No, she couldn't remember that at all.

Q. Did she remember that while she was in the hospital?

A. No.

Mr. Parmer:

That is all.

The Court:

If there is any further redirect examination, I suggest that you better put it off until tomorrow morning. We will adjourn until tomorrow morning.

Thereupon DOCTOR SPENCER HOWELL, was called as a witness on behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

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Direct Examination.

By Mr. Parmer:

Q. Doctor, are you a physician licensed to practice medicine in the State of Florida?

A. I am.

Q. How long have you been so licensed?

A. Approximate date of my license is November, 1932.

Q. What has been your medical training which preceded your being licensed?

A. I received my medical education at the University of Georgia, located at Augusta, where I spent four years;

since that time I have had various hospital connections totalling approximately three and one-half years.

Q. Are you on the staff of any hospital in Florida?

A. I am.

Q. What hospital?

A. I am on the Surgical staff of the local city hospital, Jackson Memorial, having served also on the Medical, Orthopedic and Tubercular staffs.

Q. Of that hospital?

A. At the same hospital. I am also on the Visiting staff of all Grade A recognized hospitals in this area, namely Jackson Memorial, Victoria, University, St. Francis and Alton Road.

Q. What is the difference between being on the staff and being on the Visiting staff?

A. Being on the Visiting staff is permissibility to bring patients into that institution for treatment and operative work, while being on the actual staff is to actually give your time over to charity work brought into the institution.

Q. Then you can be called upon?

A. Yes. I serve three months each year.

Q. Now prior to March, 1936, did you know Mr. Henry Yeiser?

A. I did.

Q. In what capacity?

A. As his personal physician.

Q. And in connection with what trouble were you his personal physician?

A. May I ask, sir, the meaning of your question?

Q. I want to know what ailment, if any, you were treating him?

A. I was treating him for chronic alcoholism.

Q. And when did you begin the treatment of Mr. Yeiser for that?

A. I would have to look at my dates on that. Approximately two months, sir.

Q. Two months before March?

A. Approximately, yes.

Q. At that time where was the treatment taking place?

A. Aboard his yacht.

Q. And when you began the treatment of Mr.
280 Yeiser what was his consumption of alcohol?

A. At that time I went on the case he was consuming one gallon of gin per day.

Q. And as your treatment progressed did you succeed in lessening his consumption of alcohol?

A. I did.

Q. By what methods?

A. By progressively reducing the amount of alcohol in each drink. At the time or just previous to this trip in question I had reduced his daily consumption to less than four ounces of alcohol.

Q. And when you say four ounces of alcohol does that mean four drinks per day?

A. Four ounces, sir, actually measured gin.

Q. Was gin the drink that he drank?

A. Gin was the only drink that he was consuming.

Q. How was his general condition just before this trip with which we are concerned as a result of your treatment?

A. Well, I was very happy in the progress that I had made on the case, or the apparent progress, we will say, because Mr. Yeiser complimented me very highly.

Q. Instead of referring to his condition as it affected you, tell us how he progressed.

A. That is what I want to explain.

Q. I am not sure that they will allow you to do that, doctor.

A. His progress was very good. He came into the city for the first time in six months.

Q. How long before this trip?

281 A. Just a day or so.

Q. Spent the day ashore?

A. Yes, he spent the day ashore.

Q. Now when did you learn that he was contemplating this trip?

A. Oh, it was spoken of for two or three days prior to their going; it was mentioned, however; Mr. Yeiser himself did not mention it to me until the night before they were to take off.

Q. When you heard that this trip was contemplated did you have a conversation with Mr. McKay?

A. I did.

Q. What did you say to him and what did he say to you?

A. I asked Mr. McKay not to go on the trip or to not take Mr. Yeiser out, that I felt it would be most detrimental to him and that if he got back on the amount of gin that he had been on it would probably mean his death.

Q. Did Mr. McKay say anything to you when he told you that?

A. I forget his answer other than to say or intimate that he would take care of it, and that's about all.

Q. Well, now did you receive any word from the yacht Friendship II on the morning of March 2, 1936?

A. Yes, sir.

Q. And as a result of that where did you go?

A. I went to the yacht which was anchored in the Royal Palm Yacht Basin, sir.

Q. When you got there who did you see and what did you do?

A. I went aboard the yacht from the right-hand side of the boat, or the left side looking forward. The first person to meet me at the gangplank was one of the seamen, and Mr. McKay spoke to me just as I had gotten on board the deck, so we had a couple—

Q. Can you tell us approximately the time when you got there?

A. It was probably somewhere around 8:30 or 9:00 o'clock; probably eight to nine o'clock, somewhere in there;

I don't remember the time, but approximately that is right; it was the first call I had made that morning, and I had been up quite late the night before.

Q. When you received word where were you?

A. I was at my home, and I hurried to the boat because the call said to hurry there, which I did.

Q. And you saw Mr. McKay?

A. Mr. McKay said that we have a couple of carbon monoxide poisoning cases here, and on the aft deck to one side was Henry C. Yeiser standing there shaking.

Q. What do you mean by "shaking"?

A. Well, he was jittery all over, very jumpy and nervous.

Q. Had you ever seen that condition in Mr. Yeiser before?

A. I had at the beginning of my treatment of him, sir.

Q. And what in your opinion was that condition caused by?

A. May I correct my remark there to say I had not seen him manifesting shaking as much before as he was that morning. He of course said, "we have got a couple of monoxide poisoning cases here, doctor," and that's
283 that. Of course these seamen were around and

I paid little or no attention to them. Lying on a raised portion of the aft deck, which was well upholstered, heavy cushions and the like, was Mrs. Just, Mrs. Charlotte Just, who was apparently well cared for, covered with a blanket and so on.

Q. Did you go over to her?

A. I went to her and very hurriedly checked her pulse, which was all right. As to the other patient, I dashed into Mr. Yeiser's bunk or private room, and she was on his bed. I checked her hurriedly enough to see that there was no immediate danger, and I went back to the other one, and the first thing I did was to fix up a dose of caffeine sodium benzoate.

Q. What was the dosage?

A. Seven and one-half grains. It is put up in the usual form, sir.

Q. All right.

A. That was given to her. When I attempted to give it to her she pulled her arm back and objected to it being given, and when I did stick her she muttered something, but I paid little or no attention to it.

Mr. Mershon:

, May I ask that the witness identify to whom he is referring as "her".

The Witness:

Mrs. Just, sir.

(By Mr. Parmer):

Q. You may proceed.

A. Generally in giving the hypodermic we also use alcohol to stimulate the skin. I wet up her arm a bit, and it was a brisk March morning, and she pulled the covers back, pulled them up over her—

284 Q. You mean to say that she pulled up the covers herself?

A. She pulled up the covers in an endeavor apparently to get out of the briskness of the air. I went directly from her and gave the other patient, Miss Grunow, an exact dose. Miss Grunow was given a like dose. She submitted to it being given hypodermically, although she remarked about it also. Her remarks were more audible from the beginning than were Mrs. Just's.

Mr. Mershon:

We object to the remarks unless the witness says what she said. He says they were audible, but we want to know whether they were intelligible.

The Witness:

Mr. Mershon, in treating cases like that the main idea, Your Honor, is that we, as physicians, never pay any attention to these little remarks that they make, unless we feel that we are dealing with an insanity case, trying to diagnose a case of that kind, we pay very little attention to such remarks. It wasn't a matter of what she said that meant anything to me.

(By Mr. Parmer):

Q. But she did say something?

A. Yes, sir.

Q. And the difference between Miss Grunow and Mrs. Just was that whatever Mrs. Just mumbled probably didn't mean anything to you, that is, you could not understand it, whereas what Miss Grunow said was intelligible?

A. Yes, sir.

Q. All right.

A. The pilot on the boat had proceeded and secured the nurse who had formerly taken care of Mr. Yeiser, and the nurse was aboard the boat; she was helping
285 me around with each patient, tidying them up and making them as comfortable as possible and following out instructions as I gave them.

Q. Who was that nurse?

A. She was then a Miss Florence Norwood.

Q. Is she living now?

A. No.

Q. How long ago did she die?

A. I think it was in the early spring of this year that she was burned to death.

Q. Well, did you observe anything with regard to the appearance of either Mrs. Just or Miss Grunow, that is, the appearance of their faces?

A. Yes.

Q. What color was it?

A. There was a moderate cyanosis present around the mouth of both of them. When I speak of cyanosis I mean a blue discoloration of the mucous membrane of the skin.

Q. What was the color, if it was noticeable, with regard to the rest of the face or the rest of the body?

A. I didn't go over the rest of the body, sir.

Q. But the face?

A. Well nothing other than normal, probably a little pale, but the main thing was a little cyanosis around the lips.

Q. Did you notice any redness?

A. No, I didn't.

Q. How long did you remain upon the vessel
286 at that time administering to the two ladies?

A. Mr. Parmer, I was on that boat there probably an hour and a half or two hours. I was off to answer an emergency call, and I was back and forth on the boat I don't know how many times during the interval between the time I first went there and until late into that night when the last one was removed.

Q. During the time that you were first there, that is, during the interim between your first coming and your first going, did you watch the progress, if there was progress, of Mrs. Just and Miss Grunow?

A. I did.

Q. And what did you observe?

A. Miss Grunow talked right along in pretty short order.

Mr. Mayne:

I submit that that is rather indefinite.

Mr. Parmer:

We will find out.

(By Mr. Parmer):

Q. You see the objection to your statement is that it is not definite enough. Now if you can define it better it will help us all. What did you notice with regard to her talking and when; how long after you saw her did you notice it?

A. To say a definite time would make me a liar; I do not know the definite time, whether it was fifteen or thirty minutes or sixty minutes, except that in short order, sir, meaning probably within two hours' time, she was talking; she talked to the nurse. We medical men, gentlemen, if you please—

Mr. Mehrrens:

Were you present at the time she talked to the nurse?

-287 The Witness:

Yes. I was in and out of the bunk room, or his private room, I will say instead of bunk room, every few minutes.

Mr. Mershon:

She was talking to the nurse in your presence?

The Witness:

Yes, she would speak to the nurse off and on.

(By Mr. Parmer):

Q. All right.

A. We depend, as medical men, upon the nurses as our guide a lot as to how our patients are doing, because we cannot stand over them constantly and look at them, especially when they are not acutely ill.

Q. You heard Miss Grunow talking in about an hour?

A. Yes.

Q. Now how about Mrs. Just?

A. Mrs. Just didn't talk to me at all; she seemed to assume a pugilistic type of attitude, fighting back, and didn't want to be disturbed, and the like.

Q. Now you have given your reactions to them. What we want to know is what she did to cause these reactions in your mind.

A. Well, the movements of her arms, sir, when someone would try to do something for her, the movement of her head away from the oxygen container, CO₂ and oxygen which was administered to her.

Q. How long after you came there was this CO₂ and oxygen administered to her?

A. That was ordered immediately, sir.

Q. How soon did it get there?

A. It was aboard the boat in thirty minutes' time.

Q. Did you administer that to Mrs. Just?

288 A. I gave that first, sir, and the nurses gave it.

Q. After that?

A. Yes.

Q. When you gave it did you notice anything that Mrs. Just did?

A. Yes, sir.

Q. And what was it?

A. She would move her head out of the way; when we held the funnel up to her nose she would move her head away from it; if anything touched her face she would get her head away and you would have to steady her head to make her breathe it.

Q. Did you notice whether her eyes were open at some times?

A. I didn't pay particular attention to that, sir.

Q. Well now I think you said you went away and then came back?

A. Yes, sir.

Q. But do you remember the particular time at which you came back after being away?

A. No, as I said, sir, I was on and off the boat; I would come back to the boat at every moment I could; I had other work to do and look after. These women were certainly not what I considered dangerously ill.

Q. Well now tell me during the rest of the morning on occasions when you returned, did you notice any progress in their condition?

A. Yes, sir.

Q. What did you observe?

289 A. Miss Grunow apparently was doing beautifully it seemed; she talked and turned about at random on the bunk; she was permitted to sleep, in fact, she was encouraged to take rests. The other woman turned on her side, one side to the other. As I stated before, she assumed a pugilistic type of an attitude and didn't want anybody to do anything for her. She was doing all right according to the check-up. She was nauseated during the morning hours.

Q. She was nauseated?

A. Yes.

Q. What was done for her in regard to that?

A. She was left alone to vomit, clean her stomach out.

Q. What did she vomit?

A. The food contents of her stomach.

Q. That is what she vomited?

A. Yes.

Q. Into what did she do the vomiting?

A. Containers they had aboard, or basins and things of that kind.

Q. When that took place who was holding the container?

A. The nurse was, sir.

Q. I want to know whether you were present when the vomiting took place?

A. I was present there when some of it took place, sir.

Q. The nurse would hold the container?

A. Yes.

Q. And what did Mrs. Just do?

290 A. Well, she would vomit; that's all I can say, sir.

Q. What I want to know is if it is true or not that she directed the course of the vomiting in the basin, or was she required by the physician or someone else to do it?

Mr. Mayne:

We object to leading the witness. You are just trying to put the words in his mouth.

The Court:

The objection is overruled.

A. She did not vomit on herself; she did not soil her bedclothes; she directed the vomitus away from her, and she didn't have to be told to do it either.

Mr. Mershon:

We move to strike that last answer on the ground that the physician said he was not present there except on one or two occasions when she vomited.

The Court:

I think it is a matter for cross examination. You may proceed.

Q. Doctor, did you return to the vessel at any time in the afternoon?

A. Yes, sir.

Q. Do you know at about what time you returned?

A. I was there shortly afternoon.

Q. Now when you returned on that occasion did you remain on the vessel until Mrs. Just was taken to the hospital?

A. Mr. Parmer, I was there, as I told you a while ago, off and on so many times during the day; I don't know how many times I was off and on the boat, and as to the particular time in the afternoon I was there,—I was there shortly after the noon hour, and I did take the
 291 young lady to the hospital personally about two o'clock, somewhere in the neighborhood of two o'clock.

Q. Well now at that time when you took Mrs. Just to the hospital what did you do with regard to Miss Grunow?

A. I left her alone there on the boat.

Q. Before taking Mrs. Just to the hospital did you have a conversation with Mr. McKay?

A. I did, sir.

Q. And at what time did that conversation take place?

A. I couldn't state that time, sir.

Q. Was it in the morning or afternoon?

A. In the afternoon.

Q. Approximately how close to the time when you took Mrs. Just to the hospital?

A. Well, certainly within the hour, sir.

Q. Now in the course of that conversation will you tell us what was said to him and what he said to you?

A. I wanted to take the young lady to the Jackson Memorial Hospital because the Jackson Memorial is one of the best equipped and most outstanding hospitals.

Mr. Mayne:

We object to that; he was asked what was said between the two parties, and not his observations of one hospital.

The Court:

Just a minute, Mr. Parmer; if you will let the Court rule on the objection of Mr. Mayne we will get along better.

Mr. Parmer:

Thank you, Your Honor.

292 The Court:

The voluntary statement as to the character of the hospital is not responsive to the question. If you will respond to the question and answer it directly, Doctor, you will be better off.

Mr. Parmer:

Please restate the question to the witness, Mr. Reporter.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I wanted to take her to the Jackson Memorial Hospital and I talked with Mr. McKay regarding it, and he said, "no, we don't want to take her to Jackson; it is a city hospital and the newspapers would snoop around there and get this story in the papers and they will make a nasty story out of it. I don't want to take her there. What about the St. Francis." I said that it was a long way away, at the Beach, and very inconvenient, and I said; "but if you wish, we will take her wherever you say. I don't care."

Q. Well how close was the Jackson Memorial hospital to the place where the boat was?

A. Oh, the boat was right over here at the Royal Palm dock, sir, and it was probably a maximum of six to eight blocks away-Southeast. Jackson Memorial is at 1700 block of Tenth Avenue, Northwest.

Q. What is the distance?

A. Roughly a mile and a half.

Q. Is it a fully equipped hospital?

293 A. Yes, it is; Jackson Memorial is conceded to be the best equipped hospital south of Atlanta, one of the best equipped hospitals in the south.

Q. And that is where you are on the staff, I believe you said?

A. Yes, sir.

Q. Well now as a result of seeing these girls on board the vessel prior to the time that Mrs. Just left for the hospital, did you form any opinion with regard to what was the cause of their condition?

A. Yes, sir.

Q. What opinion did you form?

Mr. Mershon:

We object to that question because it has not been definitely stated what is the basis of this opinion he is now asked to express. If counsel wishes to limit his opinion to just what he has described and nothing else, it may be admissible.

Mr. Parmer:

I think it is limited.

Mr. Mehrtens:

The question is too general; it does not give definitely enough the basis of the opinion that the witness is asked to express.

The Court:

I think that is a matter of cross examination. I think that from what has been brought out there is sufficient for this witness to express an opinion.

Mr. Mershon:

I do not mean to be persistent here, if the Court please, but I wish to call attention to the fact that the question does not say: "As a result of what you saw there, as you have previously related"—

294 Mr. Parmer:

Yes, I will accept that suggestion. May I re-frame my question, Your Honor?

The Court:

You may.

(By Mr. Parmer):

Q. Doctor Howell, as a result of what you saw while you were on the vessel during the course of your examination and observation of the two women, as you have previously related it, did you form any opinion as to what was the cause of their condition?

A. I did.

Q. And what opinion did you form?

A. I felt that they were suffering from carbon monoxide poisoning.

Q. As you had been told?

A. Yes.

Q. Did you form any other opinion, medical opinion, as to what they were suffering from?

A. I did.

Q. What opinion did you form?

A. Well, I thought that there was a great probability of alcoholism.

Mr. Mayne:

A great probability?

The Witness:

A great probability of alcoholism, sir.

(By Mr. Parmer):

Q. Now you say that you went to the hospital with Mrs. Just?

A. Yes, sir.

Q. And when you arrived there did you proceed to prescribe for her?

A. I did.

295 Q. Doctor Howell, I show you this part of the hospital record which has been marked in evidence as Claimant's exhibit No. 9-A, and call your attention to the sheet entitled "Treatment Record-Physician's Orders," and particularly the note bearing date of March 2, 1936, with your name at the bottom, and ask you if that is a copy of the order made by you on March 2nd, which was first entered in the order book?

A. Yes, sir.

Q. Now will you tell us what orders you gave for the treatment of Mrs. Just?

A. The first order was high SS enema.

Mr. Mershon:

We object to the witness reading from his record unless he is asked to do so. The question apparently called for the witness' own recollection.

The Court:

Unless it is made to appear that he is looking at it for the purpose of refreshing his recollection.

Mr. Mershon:

That is all right.

A. I cannot give it in the order that I put it down on the order book, but I can tell you what I ordered.

Q. All right.

A. First I ordered, as I stated, a high SS enema, which is a soapsuds enema, to clean the lower bowel out; I ordered sodium phosphate fleets, an ounce of them. Following my high SS enema I asked for a black coffee retention enema. I also use caffeine sodium benzoate—we will say PRN—when necessary as a supportive measure,

and I ordered, I think, an ice-cap to her stomach to allay the nausea and vomiting. I think that covers it, sir, although I am not sure.

Q. Will you tell us wherein the different
296 medicants that you have mentioned there are supposed to be efficacious in alleviating the particular thing you were trying to cure?

A. The medicants ordered are almost standard treatment for alcoholism.

Q. Will you tell us what each one does; what it is designed to do in treating alcoholism?

A. The soapsuds enema was purely to clean out the lower bowel, and the black coffee enema is a retention enema, which is a stimulant, and the caffeine absorbed from that stimulates the brain centers, as well as stimulates the flow of urine.

Q. Is there any similarity between such a caffeine enema and the cups of black coffee that people will drink after being out on a night of heavy drinking?

A. They are the same thing, sir. When it cannot be taken by the mouth on account of the vomiting and nausea, it can be given through the rectum, and it is absorbed the same way. Caffeine sodium benzoate is a stimulant; it also stimulates urination and it stimulates the psychiatric centers of the brain.

Q. What is the reason for stimulating urination in alcoholism?

A. Elimination, sir.

Q. Proceed with the other things that you gave.

A. I put an ice-cap to her stomach in an endeavor to settle her stomach; she upchucking, or vomiting, quite a bit, and had been vomiting from the boat to the hospital.

Q. Now this sodium hydrophosphate,—do I have the name right?

A. No, sir.

297 Q. Sodium phosphate, then?

A. Sodium phosphate.

Q. All right.

A. Sodium phosphate is bordering between powdered magnesium sulphate, which is Epsom Salts, and which is used for the purge of the bowels; it has a very high cathartic effect and it draws the water into the bowels and increases the elimination.

Q. Is it in any way preferable to Epsom Salts?

A. I prefer it, because it is a bit more potent, sir.

Q. Is the dosage that you give there the dosage designed for an ordinary cathartic, or was it designed for a particular case of alcoholism?

A. No; the dose that I gave was about twice the normal dosage for a normal individual; it was designed to give a marked elimination.

Q. Let me show you the hospital records. Now, Doctor Howell, I call your attention to this note here which I believe is in your handwriting, on Page 1 of Claimant's Exhibit 9-A, that is, on the first page. I think that says "C. C."; that is "chief complaint"?

A. Yes.

Q. And after that it says "Apparent CO2 poisoning"?

A. That is right.

Q. That was written by you?

A. Yes, sir.

Q. Are these notes also written by you?

A. Yes.

298 Q. I will read them.

A. All right.

Q. What does "P. I." mean?

A. Present illness.

Q. "Called to boat 8 A. M. to see patient in semi (line drawn through the semi) unconscious condition-moderate cyanosis-increased inspiration"—

A. Respiration.

Q. "Rapid pulse and a history of apparently being overcome by fumes from the boat's engines. Given

C O 2 5% & Oxygen 95%— and caffeine-thence to hosp.”
And all of that was written by you?

A. Yes.

Q. Now I call your attention to what appears on the second page of Exhibit 9-A at the top under the printed words “Working diagnosis: After physical examination”, —there appears “CO2 poisoning”.

A. Yes.

Q. Was that entry made by you?

A. Yes, sir.

Q. I call your attention to this note under “Physical findings”, at the bottom thereof, where it says: “Imp”. What does that mean?

A. Impression.

Q. And after that “CO2 poisoning”?

A. Yes.

Q. That was put there by you?

299

A. Yes, sir.

Q. Well, now, doctor, will you explain how it came about that you put down on the hospital records that this Mrs. Just was suffering from carbon dioxide poisoning if your opinion actually was that she was suffering from alcoholism and was not suffering from carbon monoxide poisoning?

A. Yes, I can explain that. Aboard the boat, sir, I was given to understand that they didn't want any publicity. Mr. McKay made it very plain that they didn't want any nasty story about the thing, didn't want the newspapers to get hold of it. I had a case there that I believed to have been alcoholism, and in an institution or religious institution such as the St. Francis hospital, to write a diagnosis—

Mr. Mayne:

I object to that; I don't think it is proper, and it is certainly a conclusion of the witness.

Mr. Parmer:

It is necessary to explain the apparent contradiction.

Mr. Mershon:

It has not been shown that that was ever conveyed to those claimants or to anyone representing them, and it is objected to on the further ground that it is a self-serving declaration. If the witness is undertaking to testify to a rule of the hospital, there is a proper way to prove that, basing his opinion upon the rules of the hospital. The rules should be first admitted in evidence and then the witness may refer to them.

Mr. Parmer:

There has been no attempt to testify to a rule of the hospital.

300 The Court:

That is exactly what he was doing. He was explaining the rule of the hospital, of a religious institution, as to why he did so and so in view of that rule. The objection is sustained to that portion of it.

A. Your Honor, I can explain it in a different way. I do not have to put in the rules of the hospital whatsoever other than to say that I didn't write it alcoholism more as a protective measure for the girls, their good names,—

Mr. Mayne:

I object to that, Your Honor; it is a voluntary statement. It has not been shown that the girls requested him to do this, and certainly any request by Mr. McKay would not be binding on these claimants.

Mr. Mershon:

And the additional ground, if Your Honor please, that he has not even testified that Mr. McKay asked him to use any protective measures in writing up the diagnoses on the hospital records.

The Witness:

May I explain, Your Honor?

The Court:

No; just a minute. I do not regard this as an impeachment of one's own witness. I don't think it falls within that category; neither do I think it is necessary to render his explanation of why he made a record at the hospital inconsistent with what he stated was his opinion. I shall allow him to proceed with his explanation of why he made the records, but without reference to what was stated by anyone else requesting that that be done. He can make a statement of why he did what he did. You may proceed along that line.

301 The Witness:

From the record, gentlemen, it is apparent that I had in mind alcoholism, because I treated them for that. I wrote there "CO2 poisoning", which is not carbon monoxide, because there was no use of hurting the girls. That was all there was to it. I felt that the record would go to the record-room and that would be the end of it and that nobody else would ever be the wiser. If I may make a statement—

The Court:

Do you want to make a statement, if so, you may.

The Witness:

I will say in explanation, gentlemen, that I have a very dear old lady here who is the victim of syphilis. This

lady is under my care, and I am treating her for syphilis at the present time—

Mr. Mayne:

I don't see where that is material. It merely clutters up the record.

The Court:

I think so. That is objectionable. You may proceed.

(By Mr. Parmer):

Q. Tell me, Dr. Howell, is it an unusual matter to state as a matter of record a different diagnosis than the actual one?

Mr. Mehrtens:

If he is attempting to testify as to what is the usual practice in the medical profession in Miami I object to it, because it has not been shown that he is qualified to testify to that. If he is testifying as to his own practice I will withdraw the objection.

Mr. Parmer:

I will confine it to that.

A. Circumstances alter situations, sir.

Q. Do you mean by that that under certain circumstances you have followed that practice of stating a different diagnosis than the actual one?

A. Yes, sir.

302 (By Mr. Parmer):

Q. Well, Dr. Howell, did you call any one in to assist you in this case?

A. Yes, sir.

Q. Who did you call in to assist you?

A. Dr. Bob Harris of this city.

Q. How soon did you call him in?

A. I called Dr. Harris in only in a consultant capacity the night of her admission to the hospital, only at the request of Mr. McKay, because he felt that the family would feel better, that two heads or two ideas would be better than one.

Q. Is he a leading physician in this city?

A. Yes, he is one of our very best.

Q. Did you call in Dr. Foxworthy?

A. I didn't.

Q. On the day that Mrs. Just was brought to the hospital did you receive any communication from him?

A. I did not.

Q. When did you first learn that Dr. Foxworthy was treating Mrs. Just?

A. That night upon my return to the hospital—upon my return to the hospital on my evening rounds.

Q. How did you find it out?

A. I found an oxygen tent on my patient and I asked for advice.

Q. You asked what?

A. I asked why it was there.

Q. And you found some one else had ordered
303 it?

A. I found that he had come on the case without calling me or anything of the kind.

Q. You found what?

A. I found that he came on the case without calling me or saying anything to me about it, sir. He ordered the oxygen tent and what else I don't know, because the man didn't write any orders down; he issued his orders verbally to the nurse, and that was that.

Q. Well now did you do anything about that situation when you found it out?

A. Yes, sir. I discussed it with my elders, sir, senior men in the profession, and among them Dr. Harris.

Q. Don't tell us what the conversation was.

A. All right.

Q. But as a result of your conversation with your elders did you do anything?

A. I let him alone there for a day or so.

Q. You mean you let Dr. Foxworthy alone?

A. Yes, sir.

Q. Well now did you have any communication with Dr. Foxworthy; did Dr. Foxworthy speak to you or did you speak to him?

A. About two or three days later he called me up,— his wife called me and asked me to come by his house, stating that the doctor was a semi-invalid and he wanted to talk to me regarding this case, and asked me if I would extend him the courtesy of stopping at his home en route to the hospital, and I did.

Q. How long did you remain there?

304 A. We talked probably for fifteen or twenty minutes.

Q. What did you talk about while you were there?

A. He discussed his relationship with the family; he introduced himself because I had never seen the man before that time, and probably at that time he mentioned the case, but as to going into the details he did not, sir.

Q. Did you express the opinion to him at that time that Mrs. Just was suffering—

Mr. Mershon:—

We object to that question that he is about to frame, as being leading. He should ask the question: What opinion, if any, did you express to him?

The Court:

What is that?

Mr. Mershon:

Counsel is about to ask the witness for the expression of an opinion and then stating the opinion to the witness and calling for a yes or no answer.

Mr. Parmer:

I have a reason for that, because Dr. Foxworthy testified yesterday that Dr. Howell met him on the porch and expressed a certain opinion.

Mr. Mershon:

All right; I will withdraw that objection.

(By Mr. Parmer):

Q. Did you while you were at Dr. Foxworthy's house on that occasion express an opinion to him that Mrs. Just was suffering from the after-effects of carbon monoxide poisoning?

A. No, sir; neither did I express the opinion, sir, that she was suffering from alcoholism. The man's daughter was apparently, from what he said, one of her closest friends, a childhood friend or chum, and I saw no reason to knock her to him.

Q. Now did you receive any visits from Dr.
305 Foxworthy in the hospital at any time after that?

A. Yes, I did.

Q. And where did that visit take place?

A. Well, Your Honor, may I explain the circumstances of the visit?

Q. That will come; tell us where it took place.

A. It was in the library of the hospital.

Q. Prior to receiving that visit had you made any objection to Dr. Foxworthy and his actions with respect to your orders in the case?

A. I had.

Q. What had you found out that he done with regard to your orders?

A. Countermanded my orders as they went in; not on one occasion, sir, but on numerous occasions he countermanded my orders and told the nurses that they should not carry out this or that. Finally I went to Sister Josephine and just told her in quite few words

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that I absolutely refused to work with the man any longer on the case, that either he had to go or I would go. I also went to Mrs. Just's aunt.

Q. Where did you see her?

A. In the room.

Q. In what room?

A. The patient's room.

Q. The patient was there at the time?

A. The patient was there in bed and the
306 aunt was in the room.

Q. Did you have any conversation with the aunt?

A. Yes. I told her at that time that I would not be bothered on the case with this man any longer, that it was a question of whether she wanted me to treat her or Dr. Foxworthy. I said, "You can make your own choice."

Mr. Mayne:

Fix the time right at that point.

(By Mr. Parmer):

Q. Mr. Mayne, would you like to tell him the date and place this happened?

A. My dear sir, I cannot fix absolutely the date, but it was probably the day following, a day or so following the instance on the porch. Now may I explain further, if you please?

Q. Yes.

A. I talked with this Mrs.—I don't know the lady's name—but it was her aunt anyway.

The Court:

Bischoff.

The Witness:

Bischoff. I talked with her and she expressed the desire that if possible I try to be more tolerant of the

man and permit him to remain there. It seemed that he was a friend of the family of somewhere else, and that she herself would have to go into a routine explanation of something to the family, and I told her that I had just tolerated him as much as I could, and that was that, and she said, "In that case, doctor, I will notify Dr. Foxworthy myself that he is not to see the patient again." I said, "Very well." I had the same agreement with the hospital, or at least with Sister Josephine. Following that little talk to the hospital and to the aunt, the next morning at about seven o'clock his wife called me.

Q. Whose wife?

307 A. Dr. Foxworthy's, and she was exceedingly nasty; she said that I was a cad and everything else she could think of, that I had taken advantage of an elderly man, and I explained to her as best I could, but she would not listen to any explanation. She asked me if I would extend the courtesy of talking with him that morning, and I said I would be very happy to talk with him if he had anything to say to me. She asked me then where and so on and I told her I would be at the hospital, that I would probably be there around ten o'clock. I was there at approximately 10:30, running a bit late, and she bawled me out before I got out of my car.

Q. Who did?

A. His wife.

Q. Was Dr. Foxworthy there?

A. No.

Mr. Mershon:

That is objected to.

The Court:

Strike that in regard to what Mrs. Foxworthy said.

The Witness:

In other words, I proceeded on into the hospital and I talked with Dr. Foxworthy in the library of the hospital. We didn't even sit down. He came in and apologized first for his forcibly injecting himself into the case, and went on to explain again that he was a friend of the family and so on and so forth. I explained to him my reaction to his actions in cancelling my orders and that I had done everything in the world I would

for the patient, and that I didn't feel it was
308 right; whereupon he said, "Doctor, there is no use of us bickering over this case; it is big enough for both of us; it is a case in which I am going to advise these young ladies to sue." He said, "It will be a nice fee for both of us." I said, "Doctor, do you realize that I am the personal physician of Henry Yeiser"; he said, "Yes, but that does not make any difference; these girls have good grounds for a good suit", and that's that. I said, "I won't be a party to anything of that kind." We parted and he wasn't to go back on the case. I carried on there probably for twenty-four hours afterwards and the girl was doing beautifully and I discharged her from the hospital.

Mr. Mayne:

Who discharged her?

The Witness:

I discharged her, sir, but in a short time afterwards I learned that he was seeing the patient in spite of my objection.

Mr. Mayne:

I object to that, Your Honor.

Mr. Parmer:

You can't tell what you learned.

The Court:

That is stricken. Just to follow that up, to where was Mrs. Just removed from the hospital?

The Witness:

Your Honor, she was removed about that time to her home or residence of her aunt, as best I know.

The Court:

Did you visit her to the removed place?

The Witness:

I went to visit her where I was told that she was, but she wasn't there, sir.

The Court:

Did you ever attend her medically or professionally after that?

The Witness:

I did not, sir.

309 The Court:

Did you have any conversation with Dr. Foxworthy thereafter in regards to her professional treatment by either you or him?

The Witness:

Your Honor, I haven't seen Dr. Foxworthy until last night since the happening in the hospital.

Mr. Mershon:

I would like to ask counsel to inquire of the witness if she left the hospital at the time he says he discharged her.

Mr. Parmer:

I am getting into that now.

The Court:

We will take a fifteen-minute recess.

(Recess.)

(By Mr. Parmer):

Q. Doctor, I want to inquire about the time when you discharged Mrs. Just from the hospital. Can you tell us approximately when it was, or would you need a record in order to tell?

A. No, sir. I discharged her the day before the young lady left the hospital.

Q. Did you find out that she was there after you had discharged her?

A. Yes.

Q. Did you ascertain how she happened to be there after you did discharge her?

A. Because my order just wasn't carried out, sir; Dr. Foxworthy apparently intervened and felt like keeping her there.

Q. Now you were asked with regard to whether you saw Mrs. Just after she left the hospital and I think you said you didn't.

A. That is right.

Q. Did you go to her place of abode?

310 A. I went to where I was told she would be.

Q. Where did you go?

A. To the home, the so-called home of her aunt on the Beach; it was in some Villa way up on the ocean front; I can go to it, but I can't give you the address of it. It is in a group of houses that are built in an arch called some Villa; I don't know what the name of it is.

Mr. Mershon:

Archway Villás?

The Witness:

I wouldn't know if you told me, Mr. Mershon. I could go to it; I could go to the house as far as that is concerned.

(By Mr. Parmer):

Q. When you arrived there whom did you see?

A. When I arrived there I was asked to sit down on the ocean front there a few minutes. I sat there and waited for Mrs. Bischoff. Mrs. Bischoff was talking over long distance telephone to somebody somewhere, and I was told that I would be ushered in as soon as that was over. I waited around and was asked in in a bit and talked with Mrs. Bischoff.

Q. You talked to her?

A. Yes.

Q. Did you see anybody else there?

A. No, I didn't.

Q. Did you see anybody else while you were there besides Mrs. Bischoff?

A. I didn't.

Q. Did you ever see Miss Grunow at any time after Mrs. Just left the hospital?

A. I saw neither one of them.

311 Q. You didn't see Miss Gruner again?

A. No, I didn't see either Mrs. Just or Miss Grunow.

Q. Now did you ask to see Mrs. Just when you saw Mrs. Bischoff?

A. I told her, when I made my entree, that I thought I would drop in to see how the young ladies were getting along, and I was told that Mrs. Just was out, but that Miss Grunow was there; however, she returned earlier in the evening from a cocktail party and had retired.

Q. Did you see her?

A. No, sir; she was retired.

Q. She was retired?

A. Yes.

Q. And you didn't see Mrs. Just at all?

A. No, sir.

Mr. Mayne:

Fix the time at that point.

(By Mr. Parmer):

Q. Please tell us how long after Mrs. Just left the hospital it was that you went to this Villa.

A. Well, Mr. Parmer, probably three or four days; I don't know just exactly the date.

Q. What time of the day?

A. In the evening, sir; probably around nine or nine-thirty; somewhere along in there.

Q. Coming back to the time that you were on the boat. When you arrived there in the morning the first time did you have an opportunity to observe Mr. Yeiser's actions while you were there?

A. Yes, I did.

312 Q. What did you observe with regard to his actions in addition to that which you have told us about?

A. It was very evident that Mr. Yeiser was drinking very heavily, sir.

Q. And what was evident about that?

A. His general condition, the fact that he was in the condition that he was in. I knew him. That's all.

Q. Well now did Mr. Yeiser ever have any difficulty about walking?

A. Yes, he had.

Q. What caused that?

A. Alcoholic neuritis.

Q. What was the effects of it; how would it appear to someone else who looked at him?

A. Very unsteady on his legs; however, he overcome it to a great extent.

Q. You mean as a result of your treatment?

A. I mean up to that time.

Q. On the return from the trip did you see any evidence of that?

A. Yes.

Q. Will you tell us or show us how he walked?

A. His legs lost their muscular coordination; it is a tremble affair; it is not only that but it is quite painful and achy type of a thing, and it also gives you an unsteady gait.

Q. During the time that Mrs. Just was in the
313 hospital and observed by you, will you tell us what you observed with regard to her progress; and if you need the records to refresh your recollection you may have them.

A. Her progress was exceeding happy, sir, and, as I said, there was no apprehension as to her well-being at the time I put her in the hospital; however, I felt that the situation needed hospitalization, that she certainly could not be left aboard the boat, and I didn't feel that it would be best for my patient. During that evening she was talking and so on and so forth, and was co-operative. The following day she was very co-operative and very talkative. She talked along to me; however, there seemed to be—she expressed a fear the following day—it seemed that she was worried that her child might be taken from her by her husband.

Q. Did she say why she feared that?

A. The only thing—the thing I concluded was—

Q. I don't want your conclusion.

A. All right, sir; excuse me.

Q. I want to know if she conveyed in words to you the reason for her fear; don't state your own conclusions. In other words, did she say anything which conveyed the impression to you as to why she did it?

A. There was this fear that existed.

Q. I don't want your conclusions; I want to know what she said.

A. All right.

Q. I note that on the 3rd of March you made the following note—is this your note?

A. Yes, sir.

Q. Of March, 3rd?

314 A. Yes.

Mr. Mershon:

We will ask counsel to refer to the instrument.

Q. It is on Claimants' Exhibit 9-A, on the third page thereof. It is the note dated March 3, 1936, at 2:00 P. M.: "Patient seen—waked out of sound sleep—color good after removal from oxygen tent—patient's mentality, apparently quite clear—mind active and alert; however, there is a definite aphasia present." What is the next?

A. "She is quite talkative and pleasant. Does not recall happenings of yesterday. Pulse 86-B. P. 110/70. Progress very good."

Q. And that was signed by you?

A. Yes.

Q. Now was that a normal blood pressure, 110/70?

A. Yes, sir.

Q. Was that a normal pulse, 86?

A. Yes, sir.

Q. Well now will you tell us what you mean when you use the word "aphasia"?

A. I meant by that, gentlemen, that she was evasive. I realize that the use of the word "aphasia" is incorrect there, because aphasia really means inability to speak words, but refers down to the latter explanation of it below there where I said that she was unable to remember happenings of yesterday, and so on and so forth.

Q. In other words, what you say—

315 A. She did not want to recall those, you see.

Q. In other words, you have here, "she is quite talkative".

A. Yes.

Q. So in using the word "aphasia" you say you did not mean it in a technical sense?

A. No, sir.

Q. Now let's refer to the March 4th entry on the same page. Will you read that?

A. "3-4-36—patient feels very good—talks freely; however, is apparent mentally cloudy yet."

Q. With respect to what subject, if any, or subjects, was she mentally cloudy?

A. I referred back to my quizzings of the happenings of what happened to her.

Q. Now I call your attention to the note on the fourth page of the same exhibit which appears to be dated March 5, 1936, and I will ask you if you made that note?

A. Yes.

Q. Will you tell us what it says?

A. "3-5-36. Patient sleeping upon my visit—apparently progressing nicely. I feel that all sedatives should be discontinued and give the mental condition a chance to clear. Sedatives should be used only if nerve condition necessitates same."

Q. I want to ask you, sir, had you been prescribing sedatives yourself?

316 A. I may have in the very beginning, but I don't remember, sir, but I had cut them all out because I felt that they should be cut out.

Q. Well now I want you to look at the record and see if you gave orders in the beginning—see if you can find any orders in the beginning made by you prescribing sedatives?

A. Yes, sir.

Q. Will you look at it and see if you did prescribe any sedatives in the beginning?

A. "3-4-36. Neurcene", which is a sedative, because she complained of nervousness. That is all.

Q. Can you tell from that record whether any other sedatives were being given her on the recommendation of anyone else?

A. Yes, sir.

Q. Please tell us.

A. Apparently Dr. Foxworthy ordered triple bromide effervescence on the 5th. I can go back through the nurses' records, sir, and find out whether anything was given.

Q. I wish you would go through the nurses' records and tell us what other sedatives were given than those you prescribed.

Mr. Mershon:

If Your Honor please, that nurses' record is in evidence here. It seems to me that we are just cluttering the record by having this witness read it. The record is the best evidence of what the records contain.

Mr. Parmer:

We need an interpretation of that. I don't know what a sedative is. It might be a sedative here that I don't know.

The Court:

I suppose he can go on with it.

Mr. Mershon:

With that purpose in view I think that is proper.

317 A. There is another order here that I see, sir; it is neurophosphates.

Q. When was that given?

A. On the 4th.

Q. At whose recommendation?

A. Dr. Foxworthy's; she got that right along.

Q. When you say "she got that right along", what do you mean?

A. She was getting that practically continuously. His orders called for two drams of it, or two teaspoonsful, before meals.

Q. Before every meal?

A. Yes. That is all I see here.

Q. Now do I understand you correctly that this order in regard to this sedative prescribed by Dr. Foxworthy required the giving of it before each meal?

A. Yes.

Q. While she was in the hospital?

A. Yes, sir.

Q. Did you at any time object to the giving of these sedatives?

A. I made notes to that effect.

Q. You made notes to that effect?

A. Yes.

Q. What notes did you make?

A. On the 5th I said that I thought all sedatives should be discontinued.

318

Q. And were they discontinued?

A. I will check back here, sir, and tell you. They probably were, though.

Mr. Mayne:

You say that was the 5th?

Mr. Parmer:

Yes, the 5th.

The Witness:

No, sir; they were not discontinued.

(By Mr. Parmer):

Q. In other words, after you said that they should be discontinued, they were not discontinued after that?

A. They were not.

Q. What is the effect of the continued giving of sedatives to a patient in the condition of Mrs. Just?

A. It varies with the type of sedatives you use, sir. In the minor or light sedatives of course we get an evenness of disposition and so on; from the heavier sedatives you can go so far as to knock them out or bring about a narcosis. These sedatives that were given her were more or less mild sedatives; they would settle her down and make her a bit listless and the like at the time. However, these things have a toxic effect on the mental or brain reaction. We see that particularly in our barbituric acid cases, but this was not barbituric acid.

Q. Did you have that circumstance in mind in any way when you made your recommendation?

A. Yes; I wanted to see if I couldn't get her to recall some of the happenings. I wanted to absolutely clear my own mind about it, about the situation.

Q. You mean with regard to the—

319

A. With regard to the mental cloudiness, sir.

Q. Mental cloudiness?

A. Yes.

Q. You mean with respect to what had happened on that boat?

A. Yes, sir; in other words, sir, I wanted to see in my own mind whether she was putting on or faking the headaches that she put on so often. Do you see what I mean?

Q. Yes.

A. That is what I was doing.

Q. Then you wanted to let her mind get free?

A. Absolutely.

Q. Without being depressed?

A. Yes.

Q. By the symptoms?

A. By anything.

Q. And if that were allowed you could tell whether these things were genuine or not?

A. Yes, sir.

Q. Now did you have any conversations, other than the one you have already related with Mrs. Bischoff in the room while Mrs. Just was present?

A. Yes, I did. I spoke with Mrs. Bischoff each time I went in the room. She was there you might say practically every visit I made; at each one of these visits there would be quite a few words passed between us as to how I thought the patient was doing and the like. Directly following the time of the talk with Dr. Foxworthy, Mrs. Bischoff told me that she had been advised, that Dr. Foxworthy told her, to enter suit, that that was the thing.

Q. Was Mrs. Just there at the time?

320

A. She was there in bed. She was in the room. She said, "Now you see, doctor, that we could not have such a thing as that." She said, "There isn't any sense in anything like that." She spoke very highly of Henry Yeiser and expressed her appreciation of his endeavor to see the young ladies the next time when they were visiting in Miami. She said that that proposition was absolutely out of the question, and she asked that I convey her regards to Yeiser.

Mr. Mayne:

Fix the time of that conversation, if you will.

The Witness:

That was approximately the day following the conversation with Foxworthy.

Mr. Mayne:

When was that; the first conversation?

The Witness:

I don't know. No, it was the second conversation. I talked with him first, sir, on his porch, and the next conversation was in the library of the hospital.

Mr. Mayne:

Several days after the first conversation?

The Witness:

A day or so afterwards.

(By Mr. Parmer):

Q. On the day following that you had your conversation with Mrs. Bischoff in the hospital room?

A. Yes, approximately that time.

Q. Now did you have any other conversation with Mrs. Bischoff after Mr. Yeiser died?

A. I visited the home over there.

Q. No. I said while you were in the hospital did you have any conversation with Mrs. Bischoff after Mr. Yeiser died?

A. I spoke to her on my visits when I went in and out. That is all.

Q. Was the subject of Mr. Yeiser's decease mentioned?

A. It was, but it was just a "regret". That's about all. He was just a patient of mine, and that was that.

Q. Well, now do you know of what Mr. Yeiser died?

A. I did.

Q. Of what did he die?

Mr. Mayne:

We object to that as being immaterial to any issue in the case.

Mr. Parmer:

I will withdraw the question.

Mr. Mehrtens:

I don't think he is qualified to answer the question unless he held an autopsy after his death.

The Court:

The question has been withdrawn.

Mr. Parmer:

I do not care to pursue it unless you want me to.

The Court:

Objection was made to the whole question and you said that you withdrew it. Apparently that was done.

Mr. Parmer:

Very well, Your Honor.

(By Mr. Parmer):

Q. Were you with Mrs. Just in the ambulance?

A. Yes, sir.

Q. Were you inside the ambulance where she was?

A. Yes, sir.

Q. Now did she do any vomiting?

A. Yes, sir.

Q. Who held the pan on that occasion?

322 A. I did.

Q. Will you tell us what she did in connection with the vomiting which she did?

A. Well, she just vomited in the pan that I held; that was all.

Q. Did anybody hold her?

A. No; it wasn't necessary to hold her; she turned her head and vomited in the pan. When she wanted to vomit I would stick the pan down there and that was that. She would say she had to vomit, and that was that.

Mr. Mayne:

Did I understand you to say that she said she had to vomit?

The Witness:

Yes, she said she had to vomit.

(By Mr. Parmer):

Q. Did she do any other talking on the way over?

A. A few words along; I don't know what.

Q. Was there anybody else inside the ambulance besides yourself?

A. Yes.

Q. Who was it?

A. The owner of the funeral home, Mr. McGhan; it was the aerocar that we were using; it was a large aerocar.

Q. And there was a driver also?

A. Yes, but he was out in the front of the car.

Q. Did that occur on the afternoon of March 2nd?

A. Yes, sir.

323 Mr. Parmer:

That is all.

Mr. Mershon:

If Your Honor please, I think this would be a good point to suspend for noon, and we would like to have an opportunity to go over this record and then call Dr. Howell immediately after lunch.

The Court:

Do you wish to pursue the cross examination immediately after lunch?

Mr. Mershon:

Yes, Your Honor.

The Court:

If we are all here at a quarter to two we will start at that time; if someone is absent, we will wait until two o'clock.

324 Miami, Florida, October 7, 1937, 2:00 P. M.

Met pursuant to adjournment.

Appearances same as heretofore noted.

Mr. Parmer:

Your Honor, there is one matter that I had forgotten to go into and I would like to do it now.

The Court:

All right.

Thereupon DR. SPENCER HOWELL, previously called as a witness on behalf of the Petitioner, resumed the stand and was examined further as follows:

Direct Examination (Continued).

By Mr. Parmer:

Q. Dr. Howell, at any time after you had seen Mrs. Just in the hospital on the first day that she was brought there, did you see Miss Grunow; did you see Miss Grunow later on in the day?

A. May I ask you do you mean did I see Miss Grunow that day?

Q. After you got there to the hospital, after bringing Mrs. Just there?

A. Yes, I did.

Q. Whereabouts did you see her and when?

A. Aboard the boat later on in the afternoon, sir.

Q. Will you describe what her condition was at that time and whereabouts on the boat did you see her?

325 A. She was still in Mr. Yeiser's room, on his bed, and apparently feeling very good. At that time I instructed her that I wanted her to get off the boat.

Q. Did she say anything about that?

A. She told me that she wasn't going to get off the boat, that she was going to spend the night there, that she had no idea of getting off. I told her I was sure she would change her mind; that after all Mr. Yeiser was a sick man and that she was occupying his room. She said that was all right, that he could sleep somewhere else, that it didn't make any difference to her, and that she was going to stay there, and I told her no. I left strict orders that she was to be taken off the boat and if necessary to bodily remove her to her home.

Q. Did you return to the boat again?

A. I returned to the boat again, but I didn't see her any more after that.

Mr. Parmer:

That is all.

Cross Examination.

By Mr. Mershon:

Q. Doctor, how long have you practiced medicine in Miami?

A. Since 1934; December, 1934, I think it was, Mr. Mershon.

Q. So you had been in practice for about a year and two months, that is, the year of 1935 and two months in 1936, when this thing happened?

A. Approximately, sir.

Q. You stated that you were Mr. Yeiser's personal physician, did you not?

A. Yes, sir.

326. Q. Did he have any other physician in attendance on him?

A. At that time, sir?

Q. At that time.

A. No, sir.

Q. How often did you see Mr. Yeiser during the two months immediately preceding this accident?

A. Mr. Mershon, I was on the boat on and off on an average of two and sometimes four or five times a day, in accordance with the calls that I would get from the help on the boat, you see.

Q. Who would call you?

A. Either the Captain or the engineer or one of the seamen, or one of the mates.

Q. What would be the reason for the calls?

A. Maybe he would desire my presence. May I say, Mr. Mershon, that Mr. Yeiser at the time I went on the case told me that he wanted to be co-operative, but he knew he would not be. Do you see what I mean? He wanted to get over his disability, but he was too far into it and he wanted me to help him. He said at the same time that he was not going to take orders from me or from anybody else, but that he would do the best he could.

Q. Did these calls that you received come from Mr. Yeiser on the boat?

A. Sometimes, yes; sometimes they came directly from him, or just from the men on the boat, either the chief or the captain. Someone would call me to come over and say, "Doctor, Mr. Yeiser is not so well", and I would come.

Q. The boat during that whole two months was tied up at the Royal Palm Docks?

327. A. No, it wasn't.

Q. I mean when it was tied up at all in Miami that was its regular docking place?

A. No, sir, it wasn't.

Q. Did you ever go aboard the boat at any other location in Miami?

A. Yes.

Q. Where was that?

A. In the river.

Q. Miami River?

A. Yes, in the river; not in the river, but out in the Bay; she laid in the Bay most of the time.

Q. When it was docked, as distinguished from being out in midstream or midbay, it was docked at the Royal Palm Docks, was it not?

A. If you call the Miami River a portion of the Royal Palm Docks, sir, it was.

Q. Was Mr. Yeiser living aboard the Friendship II at that time?

A. Yes, sir.

Q. On the morning you received this call, on the morning of March 2nd, who was it that you talked to over the telephone,—who was it that talked to you over the telephone?

A. If my memory serves me correctly, sir,
328 it was the chief engineer, although I am not sure.

Q. Well they had called you prior to that time and you recognized it as a member of the crew calling you?

A. Yes, sir.

Q. Did he tell you what you were wanted for?

A. He told me they had an accident aboard the boat, and that was all.

Q. He didn't tell you the nature of the accident?

A. No.

Q. He didn't tell you the nature of the accident?

A. No.

Q. He didn't tell you it didn't involve Mr. Yeiser?

A. No, sir.

Q. Was that call any different from the calls you had been previously receiving from the crew on the boat?

A. Yes, sir.

Q. Was it different in urgency or different in tone?

A. Different in urgency.

Q. What did you do upon getting the call?

A. I made it just as fast as I could down there to the boat.

Q. Did you take any instruments or appliances or anything with you?

A. Well, I carry a fairly well equipped bag,
329 sir, always.

Q. Does that meet any kind of accident or emergency?

A. Relatively, sir.

Q. Do you mean to say that you went down there without making any inquiry at all as to the nature of the accident?

A. Yes, sir.

Q. Before leaving?

A. Yes, I very seldom make inquiry into an accident before going; if I am told it is emergency, I hurry.

Q. Even though you recall the patient or whose representative is calling you?

A. I took it for granted that they knew how to differentiate an emergency, sir; otherwise, I didn't go into it then; I got into it later, however.

Q. Who employed you to treat Mrs. Just and Miss Grunow?

A. Well, I was called to the yacht and I assumed that the owner was probably responsible.

Q. Well, doctor, were you going there as the physician of these young ladies or were you going there as Mr. Yeiser's regular physician, as a physician for him?

A. I was going to take care of any emergency there, whether it was one of the crew,
330 Mr. Yeiser or whoever might have been hurt.

Q. Regardless of the nature of your employment you regarded yourself as their personal physician for that occasion and the ensuing time, did you not?

A. Well, surely, if you want to state it that way; yes, sir.

Q. Is that a fair statement?

A. Yes, sir. I considered myself the personal physician, and I would do that as a matter of course unless there is someone else associated in on the case at the time.

Q. You owed to them each and every duty that a physician owes to his patient?

A. Quite true, sir.

Q. And you undertook to discharge that duty to the best of your knowledge and ability, did you not?

A. Yes, sir.

Q. Now do you recall that sometime in the month of November, 1936, Mr. W. O. Mehrtens called at your office, stating that he was one of the firm of attorneys who represented Mrs. Just, your former patient, and Miss Grunow, and conferred with you about the case?

A. I remember someone called, Mr. Mershon, but as to who it was I don't know.

Q. Do you recognize this gentleman standing up here (Mr. Mehrtens)?

A. No, sir; I am sorry to say I don't.

Q. Do you recall having a discussion with
331 him when he asked you to please let him have a letter containing a full statement of your connection with the case, and your diagnosis and treatment; do you recall that?

A. I do.

Q. Do you recall promising him that you would do that?

A. I made no definite promise, sir.

Q. Did you make any promise?

A. I made no definite promise about it at all.

Q. Did you tell him you would not or that you would?

A. I didn't tell him I would and I didn't tell him I wouldn't, sir.

Q. How did you reply to him?

A. Well, I tried to be as evasive as possible.

Q. You evaded him when he asked you the point-blank question?

A. I didn't care to be mixed up in the thing. I was drawn into it unfortunately, and I didn't care to be mixed up in any case of any kind, here or elsewhere, and I am sorry that I got mixed up in it now, if you will permit me to say so.

Q. You did not question the fact that he represented Mrs. Just and Miss Grunow?

A. Well, it wasn't for me to question.

Q. You discussed the matter with him, didn't you?

A. I probably did.

Q. You knew of no reason why you should not give such a written statement, did you?

A. If I did I didn't make it known, sir.

Q. You did not make it known?

332 A. No, sir.

Q. And you say you did not promise him to send the statement?

A. Not that I remember.

Q. Had you given a written statement prior to that time to the Yeiser estate or to anyone representing them?

A. No; I had not given them a statement prior to that time, if I remember right.

Q. When did you give them a written statement?

A. I don't remember, Mr. Mershon, when I did. Mr. Coleman represented the Yeiser estate and I gave him a deposition, if you call it that.

Q. Did you get any waiver or the patients' approval before doing that, or make any effort to?

A. I did not.

Q. Yet Mrs. Just was your patient?

A. That is right, sir.

Q. And you have not to this day given Mrs. Just or her attorneys the benefit of a written statement concerning your connection with their case?

A. No, I did not.

Q. Isn't it a fact that after you talked to Mr. Mehrtens on two separate occasions that you received a very courteous written letter from his referring to your promise to him to give a written statement, and in which he asked if you would be good enough to do so?

A. I received a letter not only from Mr. 333 Mehrtens but I received a letter from some firm in St. Louis.

Q. I am not asking you about that now. We will come to that later.

A. All right.

Q. I show you a letter marked for identification as Claimants' Exhibit No. 10, and ask if you received in due course the original of the letter of which that appears to be a carbon copy?

A. I probably did, sir; I can't say definitely, but I probably received this.

Q. I also hand you a paper which has been marked for identification as Claimants' Exhibit No. 11, and ask you if you received the original of which that appears to be a carbon copy, except for the written signature?

A. I probably received that also; I don't know.

Q. Did you reply to either of those letters?

A. I did not; I have not replied to any correspondence of any kind on the case.

Q. In the letter of November 27, 1936, it is stated: "Dear Dr. Howell: No doubt the press of business has caused you to forget our conversation of November 20th, during which you promised to write me a letter with reference to the medical history of Mrs. Charlotte Just and Miss Anne Grunow from the time you were called

into the case on March 2, 1936, until they were discharged by you.

I would greatly appreciate such a letter and wish you would include therein the history of the case as you knew it; your connection with the case; condition of 334 the patients at the time you first saw them, including the symptoms present and your diagnosis, as well as your immediate treatment and the hospital history and treatment; whether or not they were discharged as cured and any prognosis or aftermath of the effects of their illness that you may be able to make.

Thanking you in advance for your courtesy and cooperation, I am

Very truly yours".

You never replied to that letter nor did you disavow the promise which the letter said you made.

A. My dear sir, just because someone said I promised to do so and so, is no sign that I promised them anything. I probably received the letter, and as I told you before I didn't care to be mixed with the case in any way whatsoever, and I let it go, thinking it would be better to forget it.

Q. You felt that you owed your former patients no duty whatsoever to discuss their case as you knew it either with them or their counsel, did you?

A. I felt that the case was most unfortunate all the way around.

Mr. Mehrtens:

We move to strike the answer from the record on the ground that it is not responsive to the question.

The Court:

That statement is not responsive and it is not relevant. It will be stricken.

Mr. Mershon:

Repeat the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

335 A. I didn't feel that I owed them anything.

Q. By the same token did you feel that you did owe some duty to the Yeiser estate or their representatives, without the permission of your former patients, to render to them a written statement of your treatment of these patients and their case as it came to you in the confidential relationship of patient and physician?

A. What was the question again?

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I felt that I owed no duty whatsoever, but if I owed any duty whatsoever it was to Henry C. Yeiser.

Q. How long have you had that feeling?

A. Sir?

Q. How long have you had that feeling as to who you owed that duty?

A. Since the day I was employed on the case.

Q. Since from the minute you got the call on the telephone?

A. Yes, sir.

Q. Prior to your receiving the call on the morning of March 2nd had you ever treated carbon monoxide cases?

A. Yes, sir.

Q. You had?

A. I had seen one or two of them, sir.

Q. Had you ever undertaken to treat them yourself?

A. Yes, sir.

Q. Do you have and did you have some idea
336 of what treatments were given for those cases?

A. Yes; if I had not I couldn't have gotten
by the State Board, sir.

Q. You will notice I said "some idea". I am not trying to commit you to knowing all of them.

A. All right.

Q. As you understand it, as you understood it, what would the treatment consist of when you are first called on a case where the victim had been exposed to carbon monoxide gas?

A. The treatment, sir, is supportive.

Q. What?

A. Supportive. Carbon dioxide and oxygen, and that's the only treatment of any value whatsoever.

Q. Then the elimination of carbon dioxide is to get the carbon monoxide expelled through the lungs?

A. No, sir; the oxygen eliminates the carbon monoxide, not the carbon dioxide.

Q. Maybe I said the wrong thing; you evidently understood it as I did not intend it. I will let you tell us briefly what effect on the patient does the breathing of carbon monoxide have. Tell us that first.

A. Carbon monoxide unites to the hemoglobin of the blood in proportion to volume, confinement and so on, hence it renders the blood unable to take up oxygen in normal atmospheric conditions.

Q. What effect does that have on the patient?

A. Well, it deflates them of oxygen.

337 Q. It creates asphyxiation?

A. Yes, sir.

Q. Suffocation for want of oxygen?

A. Yes, sir.

Q. What effect on that condition does it have for the patient to inhale a mixture of pure oxygen combined with carbon dioxide?

A. What effect it has on the patient?

Q. On the patient and the condition where the hemoglobin is combined with the carbon monoxide?

A. The oxygen displaces the monoxide in the blood, sir.

Q. What happens to the monoxide?

A. Well, it is eliminated.

Q. Through the lungs?

A. Surely.

Q. Through the exhaled breath from the lungs?

A. Yes.

Q. So we are right back where we started, that the inhalations of carbon dioxide mixed with oxygen is an eliminative treatment to eliminate carbon monoxide?

A. That is right.

Q. What does the supportive treatment consist of?

A. That is used in case your patient shows signs of a heart-failure, for instance, caffeine was given—

Q. That is a stimulant?

A. Stimulant, yes. Now there are various forms of supportive treatment given.

Q. You mentioned caffeine. What is the form of caffeine or the combination of it you give as your supportive treatment?

A. Caffeine sodium benzoate; that is the most common form, sir, and that is given by hypodermic.

Q. Have you not overlooked one very important element of treatment of the patient when you first come to him while he is under the influence of this carbon monoxide? I am not trying to catch you on it, but haven't you overlooked the elements of quiet, rest, immobility?

A. Mr. Mershon, to the contrary, no; not exactly, sir, because if a person is knocked out with carbon monoxide they are the same as under an anaesthetic; it doesn't make much difference whether you dance

around them all night, because they are unconscious of it.

Q. You dance around them,—I agree with you.

A. All right.

Q. But isn't one of the cardinal rules that in those cases you shall not apply any counter shock such as striking them or shaking them or dragging them around, but you leave them quiet?

A. No, I don't think that is, sir; no, sir.

Q. You have never seen that or heard that suggested?

A. No, sir.

Q. May I ask if you remember where you got the information that you have just given as to the treatment for this type of case?

A. Well, it is basic; I don't know just where I acquired that knowledge.

Q. That is what you remember?

339 A. I remember that back in my old school days; that is what I was taught in medical school and so on and so forth.

Q. As a matter of fact, doctor, you did not move Mrs. Just from where you found her on that deck couch on the upper deck at the stern of the yacht, Friendship II, did you?

A. She wasn't moved at all.

Q. You didn't order her moved?

A. No, sir.

Q. Did you order her to stay there?

A. I didn't order anything relative to that. There was no reason and I had no reason to move her or disturb her. I said, "let her alone; let her rest it off." That was all.

Q. So you did tell them to let her alone?

A. I said, "Let her alone." I said, "Give them a hypodermic", and I scheduled it for them, giving them carbon dioxide and oxygen.

Q. Didn't you know that as the physician in charge there that whatever you said would go and whatever you said would be done; didn't you know that?

A. That is true in most cases, yes.

Q. And from what you stated on direct examination, doctor, if they don't do what you wish and don't let you boss it, you don't have anything to do with it?

A. I do not, but sometimes I am forced to do otherwise.

Q. So it is a safe assumption and a proper assumption here, doctor, that she remained undisturbed because you told them to, until such time as she was taken to the hospital?

A. That is a technical point. If the woman
340 had wanted to get up and go to the toilet or something of that kind, certainly she would not have been denied that privilege.

Q. But she didn't make any effort to do that?

A. I don't know that she did, sir; not at all.

Q. Who got the tank with the carbon dioxide and the oxygen in it, together with this respirator or inhaler, or whatever you call it, attached to it, aboard the boat?

A. McGhan's ambulance picked that up for me.

Q. So you told them to get it and bring it to the boat?

A. Yes, sir.

Q. Why did you think you were going to need oxygen and a breather if didn't know what—

A. That was a safety first measure. I knew what the treatment of carbon monoxide was, and I wanted that there as a protective measure.

Q. When you got there then you immediately proceeded to administer to Mrs. Just and Miss Grunow what you now say is the regular treatment for carbon monoxide poisoning?

A. Yes.

Q. That is, your caffeine benzoate, your oxygen and carbon dioxide and we will say rest. You didn't have her moved?

Q. When did you decide to take Mrs. Just to the hospital?

A. That afternoon.

341 Q. You thought that her condition had improved to such an extent that it would be safe to move her to the hospital at that time?

A. No, I didn't think that at all.

Q. You didn't think it had improved?

A. I moved her to the hospital more as a protective measure and to get her off the boat there, because she was out there on the aft deck of the boat and I felt like she wasn't going to react or sober up, or whatever you want to call it, and that the best place for her was in a hospital and there treat her as conditions warranted it.

Q. You were still pumping the oxygen to her to get a reaction?

A. Well that was given her along, yes.

Q. And you say that as a protective measure you decided to send her to the hospital?

A. Yes.

Q. And you say that was to clear the boat. Was that to protect Mr. Yeiser or his interest or was it to protect her interest?

A. No, it was for the protection of everyone concerned.

Q. In your studies of carbon monoxide did you learn anything about the one infallible test to determine whether it was present in the blood?

A. Not being an expert on carbon monoxide, sir, I cannot go into details on it. I do know of one test, Mr. Mershon, but whether it is the one infallible test I don't know.

Q. Suppose you tell us the one you knew about the day you went on the boat.

A. The only one I knew of was Haldane's
342 test.

Q. What is that?

A. I cannot give you the details of it. I am not a laboratory man.

Q. Is that a test in which you take some blood?

A. Yes.

Q. Is that the color test?

A. Yes.

Q. That is a test that a layman can perform by taking a few drops of blood?

A. No, no layman could perform it. It is wrong to say that.

Q. Isn't it regarded as a test which a layman can perform?

A. No, it is a test for a laboratory expert to perform, and after he perform the test he has to make his mathematical deductions from his formula used.

Q. Isn't there a quick and simple test by which a few drops of blood are drawn from the fingers or any other part of the body, which is diluted and which can be spread out where the color of the blood can be observed, and if carbon monoxide is present to any degree the blood will be pinker than the normal color of the blood?

A. If so, sir, I don't know it.

Q. You never heard of that?

A. I don't know it.

Q. Did you make any effort to have a blood test made from 8:00 or 8:30 in the morning, when you first got on the boat, until the 5th of March?

A. I made no attempt to make a carbon mon-
343 oxide test whatsoever.

Q. On the 5th of March, however, a blood test was made at the hospital, wasn't it?

A. A blood test?

Q. Excuse me. I am no more expert in your line than you are in mine. I refer to sheet 9-E of Claimants' Exhibit 9 headed "urine" and "blood". What does that reflect with reference to the blood?

A. That is what we know as a blood-count, and if you care for me to I will repeat it and give you my interpretation of it. Is that what you wish?

Q. No.

A. That is a blood-count, sir; that is all; to tell whether you have any lower hemoglobin, to tell whether the red blood-count is normal, to tell whether or not your white count is normal and to tell the distribution of the cells therein—

Q. Was that the first and only test made in this case of Mrs. Just's blood?

A. Yes, that is the only one as far as I know.

Q. It was pretty safe to make one by that time and not show carbon monoxide?

A. That will not show anything regarding carbon monoxide, that will tell you whether there has been any damage to the hemoglobin set-up in the blood though. It will tell you that, and that is pictured there.

Q. Now when you took Mrs. Just to the hospital I believe you accompanied her in the ambulance?

A. Yes, sir.

Q. When did you write up this personal history on page 9-A of Claimants' Exhibit 9, which you say bears your signature on the bottom?

A. When did I write that?

Q. Yes, when did you actually write that?

A. I wrote that upon arrival in the hospital or shortly thereafter, after I had checked the woman up there.

Q. And you got there about 2:45?

A. Somewhere in there.

Q. How long did it take you to check her up?

A. Well, that is relatively a short procedure.

Q. Thirty minutes?

A. Not over that, I don't think.

Q. When you do that is that filed in the record room of the hospital?

A. No, sir; that whole record there remains on the chart throughout the stay of the patient in the hospital.

Q. So this would be available to any physician, whether properly attending her, whether invited or otherwise, or when he walked in her room; that is, this would be available?

A. It would not be left in the room; it would be left out on the nurse's chart desk. As a courtesy among men, Mr. Mershon, why we do not pick up other men's charts, though.

Q. Is that all-inclusive with you or purely personal?

A. No, it is that way considered all over; it is
345 a courtesy from one to the other, unless you are asked to view it and give your interpretation.

Q. All right, I refer to the "Physical Examination" on page 9-B of Claimants' Exhibit 9, which bear your signature and which says: "Working diagnoses, general condition, physical findings", under which is your signature, the sheet being dated March 2, 1937. I will ask you if that was prepared by you at the same time you prepared the Personal History and placed on the chart in the patient's room?

A. That was prepared at the same time and filed in the chart records; just the same as the others.

Q. When you say "in the chart records", you mean attached to her chart?

A. Yes, that is attached to the chart and the chart is left on the nurse's desk in what we call a chart rack out in the hall; that is never carried into the patient's room, except by the doctor.

Q. It is available to anyone who wants to look at it or who is interested enough to look at it?

A. No, you can't say that either. It is available to physicians.

Q. That is what I mean.

A. All right.

Q. Physicians who are properly in the hospital and who are recognized as having the right to visit there, can take it without asking you anything about it?

A. No, sir, that cannot be done. For instance;
346 if you had a patient there, I couldn't go in there and pick up your chart just at will; if so, the nurse in charge of the floor would take it away from me at once.

Q. Now as a matter of fact you say Dr. Foxworthy came in on this case, and this same record shows that he came in about four o'clock in the afternoon?

A. Yes, sir.

Q. This record shows that Dr. Foxworthy had access to the records and to this patient in the hospital at four o'clock in the afternoon on March 2nd.

A. I don't know; I haven't check it up.

Q. Well, I will afford you that opportunity (handing document to witness).

A. All right; he was in the hospital at 4:00 P. M.; there is your nurse's record on it.

Q. On March 2, 1936?

A. Yes, sir.

Q. You were in there at 2:45 and it took you thirty minutes to fix the record, so that this record, these two pages of Personal History and the physician's examination had been completed by you and were in the chart rack when, according to these records, Dr. Foxworthy walked into the hospital?

A. Yes, sir.

Q. And they were there where he could see them?

A. That is right.

Q. In your handwriting?

A. Yes.

Q. And as you say, he was put on notice that
347 you were in charge of the case?

A. I didn't say that. I beg your pardon, I don't know whether he was put on notice that I was in charge of the case; the natural assumption was that I was in charge of the case, and this record shows my name, that she was my patient.

Q. He was not put on notice that you were protecting Mr. Yeiser's interest in this capacity when you signed as physician in charge; he wasn't put on notice that you were really Mr. Yeiser's physician?

A. Mr. Mershon, please let me correct that. I wasn't protecting Mr. Yeiser's interest; I was looking after the interest of my patient. I took care of my patient irrespective of anything.

Q. But you wouldn't let her know anything about it later after she got out?

A. She never came to me.

Q. Her lawyers came to you.

A. That is a different story.

Q. Now, doctor, in the course of your studies or your practice did you ever have occasion to read or examine a bulletin put out by the Department of the Interior, United States Bureau of Mines, John W. Finch, Director, entitled "Report of Investigation" on the subject of "Dangers of and Treatment for Carbon Monoxide Poisoning" prepared by R. R. Sayers and W. P., dated May, 1923, and revised in May, 1935, which I show you?

A. No, sir, I have never seen it, sir.

Q. Now if in that text or report prepared by
348 the Department of the Interior in speaking of the diagnosis of carbon monoxide poisoning this is said: "A diagnosis of carbon monoxide poisoning is usually made from a correlation of the history and place of possible exposure which the symptoms produced. But this is not always positive evidence, because carbon

monoxide exists at unsuspected places, and the symptoms produced are common to other causes. The only infallible test is by examining the blood for carbon monoxide hemoglobin. A method and an apparatus for this test have been developed by the Bureau of Mines. By its use a small amount of blood (0.10 CC., which can be procured from a puncture wound in the finger) can be quantitatively examined in a few minutes for carbon monoxide and a true diagnosis made. The apparatus is portable (pocket-size), and the technic for use is sufficiently easy for unskilled users to make an accurate diagnosis, as well as to determine later when the carbon monoxide has been removed." Do you take issue with that?

A. No, sir; I don't take issue with it at all.

Q. Dr. Howell, why, may I ask, did you prepare for filing among the records of the St. Francis Hospital these records dated March 2, 1936, consisting of the Personal History and the Physical Examination, all of which you stated you did prepare and sign, as well as the other records which were prepared and signed and caused to be filed in the St. Francis Hospital pertaining to Mrs. Just's case; why did you do that?

A. As a hospital record.

Q. Did you realize that you were under a
349 legal duty to prepare such information and caused it to be filed there?

A. No.

Q. Were you familiar with Section 3287 of the Compiled General Laws of Florida which says:

"All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of the approval of this

law, which are required in the forms of the certificates provided for by this Chapter, as directed by the State registrar; and thereafter such record shall be by them made for all future inmates at the time of their admittance. And in cases of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted, or if injured the nature and cause thereof. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts."

Were you acting under any knowledge or regard for that statute?

A. Mr. Mershon, it so happens that we visiting physicians—it is a rare thing that we write the history and physical. I write my own, however, but that
350 is usually done by the interne in the hospital.

Q. But in this case you prepared these records to be filed in the hospital as a part of its permanent records?

A. Yes, certainly.

Q. What is the symbol of oxygen, the chemical symbol?

A. O₂.

Q. O₂ is the symbol for oxygen?

A. No; just a straight "O" is oxygen; I am no chemist.

Q. Do you make that mistake often?

A. I am not a chemist.

Q. Why did you say O₂ was the symbol for oxygen?

A. Well, because I get in the habit of just writing

C0₂. I use C0₂ and oxygen quite a bit in inhalation treatments in hospitals.

Q. When you write C0₂ what does that stand for?

A. That is carbon dioxide.

Q. You first thought that O₂ was just plain oxygen?

A. No.

Q. And voluntarily you replied that the symbol for oxygen was O₂?

A. That is right.

Q. Did you feel that way—did you make that same involuntary mistake when you wrote up this chart?

A. I couldn't say that I did. It is written out there where I say "oxygen".

Q. Where you should have written plain "O"
351 you say, "Given CO₂ 5% and oxygen 95%"—

A. That was a slip-up.

Q. That is one of the records in this hospital as made by you?

A. That is right.

Q. All right. I call your attention to page 9-A of Claimant's Exhibit 9, called the "Personal History". At the top of the page are written on the typewriter the letters: "CO". Can you tell us whether that is CO₂ or CO?

A. I don't know; I didn't write that; I had nothing to do with that.

Q. So you do not take the credit for writing in here the physical diagnosis as carbon monoxide poisoning; you didn't write that at all?

A. Here is where I put my remarks—

Q. Let's talk about this other first.

A. No, I didn't write that.

Q. You take no credit for writing that diagnosis as carbon "dioxide" poisoning?

A. No, I take no credit for that.

Q. But you do take credit for that same sheet under "Chief complaint" for writing in your own handwriting "CO₂ poisoning"?

A. I do.

Q. You didn't slip on that "O"?

A. I didn't slip on that "O".

Q. You didn't slip on that one?

A. No.

Q. You meant to write "02"?

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A. There I put down what I meant to write.

Q. You did actually mean to write carbon dioxide or C02 there?

A. Yes.

Q. But when you put the 2 on the 0 you slipped when you did that?

A. Yes, I slipped there.

Q. Do you mean to tell this Court, doctor, in cold blood and deliberately as a doctor, as a doctor, forgetting about your oath, that you deliberately meant, where in your own handwriting C02 poisoning appears on these first two or three sheets, that you meant to write C02, carbon dioxide poisoning? Just forget about your oath; I am asking you as a doctor.

A. That is all right; I meant to give the inference of carbon monoxide poisoning; that is correct.

Q. And Dr. Harris so understood it when he came out there that night?

A. That is right.

Q. Because you discussed it with him, didn't you?

A. That is right.

Q. What time did you call Dr. Harris?

A. I don't know; I don't remember just exactly what time it was, Mr. Mershon.

Q. Were you out there when he came that night?

A. No, I wasn't.

353 Q. Did you confer with Dr. Harris over the telephone before he came out?

A. Yes, sir.

Q. Did you give him briefly the case history?

A. Yes, I did.

Q. You told him you understood it was carbon monoxide; that was your diagnosis to him?

A. No, I didn't go into details regarding it; afterwards we met in the hospital later and I went into details with him.

Q. In any event, you gave him—

A. A tentative impression.

Q. A tentative impression, and gave him a carbon monoxide history?

A. Yes.

Q. So much so that before he left his office and went out there, he took with him a tube of methylene-blue as a possible antidote?

A. I don't know where he got it; he had it when I got there.

Q. You discussed with him and approved the giving of it?

A. No; he gave that before—

Q. He was giving that when you came in?

A. He had finished giving it when I got there.

Q. Have you ever given methylene-blue for carbon monoxide poisoning?

A. No, I haven't.

Q. Did you understand it had been at least considered and practiced as one of the remedies, though since disallowed?

A. That was considered so, yes, but there
354 are many hazards in using it; I never use it because of the hazards.

Q. Particular, where the patient may have a history of allergy, where it might cause something?

A. In this case that was given intravenously and it might throw a person into a shock and they are gone like that.

Q. In this particular instance when you got there the methylene-blue was being given and the reaction was not favorable, was it?

Mr. Parmer:

I object to that question.

Mr. Mershon:

I will withdraw the question.

(By Mr. Mershon):

Q. What time did you get there with respect to the giving of the methylene-blue?

A. It had been given when I arrived.

Q. Did any antidote have to be given for it, adrenalin or anything?

A. I don't remember; I don't think so.

Q. That was a closed incident when you got there?

A. Yes, sir. Of course they were fussing around at the time I got there.

Q. Did you say Dr. Harris' diagnosis appearing on page 9-C of Claimants' Exhibit 9 confirmed your own, where the words are written: "Note: The physical examination is essentially negative. In view of the history it seems likely that the patient had a case of carbon monoxide poisoning. There is undoubtedly a functional element present". I am asking you if you saw Dr.

355 Harris' diagnosis as I have just read it appearing on this chart, and in that connection I am asking you to state whether that is Dr. Harris' diagnosis as you saw it?

A. I haven't read this part of the chart at all, sir.

Q. Will you please read it?

A. As far as swearing that that is Dr. Harris' or notes of Dr. Harris, I don't know, because I didn't see him write it.

Q. You don't know his signature?

A. No, I don't know his signature.

Q. I will ask you to state whether Dr. Harris concurred in your diagnosis of carbon monoxide?

A. Did he concur?

Q. Yes.

A. As stated before, we discussed the case outside of the room afterwards, and the other possibilities.

Q. Did he concur in your final diagnosis as entered on this record of this patient's case, that it was carbon monoxide poisoning?

A. He concurred with my ideas on the case. Now whether he wrote it down there or not I don't know.

Q. Your final idea as expressed in this chart was carbon monoxide poisoning to Mrs. Just, is that right?

A. Yes, I wrote that.

Q. That is what I asked you.

A. All right.

Q. The mental reservations that you now have, but did not express in writing at the time or to the patient's family when you were talking to them or to Dr. Foxworthy, were mental reservations formed as a result of your regard for Mr. Yeiser's interest?

A. No, sir.

356 Q. In other words, they were just mental reservations?

A. Yes, you can call them that, I suppose.

Q. You mean to say that you fraudulently, in preparing these charts and filing them, intended to deceive the hospital, deceive the family of the patient and deceive every reputable physician who came into that hospital and who might look at that chart or have any interest in that case?

A. In the first place, anyone that looks at that chart must necessarily call me and get my permission; the hospital extends me that courtesy. As far as deceiving the doctors, Mr. Mershon, I discussed this case with various members of my profession, my seniors, and discussed it in full and told them. As far as deceiving the family goes; yes, I did. If that will help them and help these girls out with people who put them on a pedestal,

by saying that they were not drunk,—then I have helped them out that much.

Q. Did the hospital call you up, doctor, before Dr. Foxworthy saw that record?

A. No, they didn't, but it is customary that they do, sir.

Q. So apparently Dr. Foxworthy at least may have been misled by this?

A. No. I just think that the old gentleman took it on himself to look at it, and that was that.

Q. Do you think Dr. Harris may have had
357 such an interest in the case that merely to protect the case he would have joined in an express written diagnosis of carbon monoxide poisoning?

A. I don't know that he would; I don't know that he would have.

Q. He was merely consulting with you?

A. He was merely consulting with me; that's all.

Q. He was not Mr. Yeiser's personal physician?

A. No, sir, he had no interest in it whatever, but he also knew the other side of it, too, Mr. Mershon.

Q. And knowing it he wrote here what he did?

A. Yes.

Q. Where did Mr. Yeiser keep his liquor aboard the boat?

A. That I couldn't tell you, sir.

Q. You never could find it when you went there?

A. I didn't care to find it. I don't know where he kept his extra supply, but I hid the supply of liquor that was in use at the time; I knew where that was.

Q. Were you interested in keeping that up or down?

A. Just what do you mean; do you mean the supply or the amount of his consumption?

Q. No, the supply. Did you permit him an unlimited supply on the boat?

A. I had nothing whatever to do about how much he had on the boat. I was trying to help the man, trying to cut down the volume he was drinking per day.

Q. I am very much interested, and I am sure
358 the Court will be, in knowing how you can cut
... down liquor consumption and leave any supply
of it around him?

A. You must remember I had a day and night nurse
on him constantly; not only that, Mr. Mershon, but I
had the support of the whole crew trying to help me
out on the case, trying to cut his liquor consumption
down.

Q. How long did you keep the day and night nurse
with him?

A. So long as he required it.

Q. So he must have had a day and night nurse on the
boat when they made the trip down to the Keys?

A. No, they were not on that trip.

Q. Was that the only trip they were not on?

A. That was the only time they were not on the
boat.

Q. How often did he make these trips?

A. That was the only trip that he made.

Q. In the whole two months?

A. That I know of.

Q. That's the only one that he told you about?

A. That's the only one he told me about.

Q. I think you said that you went aboard anywhere
from one to three times a day every day?

A. That is right.

Q. So he could not have made any other trips after
that?

A. That is right.

Q. You say the day and night nurses were relieved
the day before in order for him to make the trip?

A. No, it wasn't just that way, sir.

Q. I want you to explain it then, because I
359 think that inference may have been left. If that
is not correct, please explain it.

7-52-34
A. The day and the night nurses were both, if course, working with me and acting under my orders. As I stated before, I had tried to get the co-operation of everybody to break up the trip, but it didn't work. Mr. Yeiser wanted me to go on the trip and invited me to go; he told me that he would pay me for my time and so on, and asked each of the girls to go, the nurses, and that he would compensate them just as though they were working every day when the boat was docked.

Q. You mean this trip that was planned for March 2nd,—I mean this unfortunate trip?

A. The last trip he made.

Q. He invited you all to go?

A. As a consequence I would not go and I was advising him against it, and the girls pulled off the case altogether; when the orders were not carried out as issued they felt like they were no longer needed on the case, and that was that and they pulled off.

Q. How long was that before that Friday afternoon when the Friendship II went down the Keys, which was about February 28th?

A. They pulled off just before it left.

Q. That same day?

A. I don't know what day it left, Mr. Mershon.

Q. You say they got off the boat, the nurses
360 did, the same day the boat went down on the trip in the Keys?

A. If my memory served me right as to that detail, they day and night nurses met there at the boat when relieving each other, and it was finally settled that they were going, and if I remember correctly these other persons had already come aboard the boat; I am not sure about that detail; anyway, they pulled off the case and were not on the trip.

Q. They were offered the opportunity to go?

A. Yes.

Q. And were urged to go?

A. Yes.

Q. And you were, too?

A. Yes, by Mr. Yeiser alone.

Q. He was master or owner of the boat?

A. That is right?

Q. Isn't it a fact that a trip had been talked about and planned for a week preceding the week when this accident occurred?

A. It had been.

Q. And it had been called off?

A. Yes.

Q. Who called it off and why was it called off?

A. Oh, Mr. Yeiser called it off, I guess; I think it was because of inability to get his friends together or something of the kind; I don't know just what the reason was.

Q. Was Mr. Yeiser drinking about that time?

A. He was drinking all of the time.

Q. Are you prepared to say that if Jack McKay
361 Kay says he called that trip off because Yeiser was drinking and he wasn't going with him, wasn't going to have guests aboard,—was McKay telling the truth?

A. If he stated that, it is not the truth, because Mr. Yeiser drank until an hour or so before he was dead.

Q. If McKay says that he refused to go or to permit his guests to go because Yeiser was drinking more than usual and he didn't want to start out with him in that condition, is that untrue?

A. As I stated, Mr. Mershon, I had him on a regulated schedule downwards; at the time of his departure on the trip I had gotten him down to four ounces a day.

Q. That was the day he left?

A. That was the day before he left; his consumption was four ounces daily.

Q. What was it the week before, towards the week-end of the week before?

A. I don't know; I don't remember that; it was progressively cut down from a gallon, sir.

Q. Did he have numerous relapses from time to time?

A. He would have a good day and a bad day; after all, Mr. Mershon, he wasn't a robust man.

Q. Isn't it true that he carried more liquor than your schedule provided for him the week before they went down in the Keys?

A. Not that I know of.

Q. You don't recall that?

362 A. No.

Q. You do know that the guests called off the trip and wouldn't go with him?

A. No, I don't know that.

Q. I thought you said that.

A. No, you told me that.

Q. Had you ever attended Mrs. Just or Miss Grunow before you were called this time?

A. Never saw them; I had met them on the boat just before, and that is all.

Q. Now you talked to Jack McKay about taking this trip, and Jack said that he would take care of Yeiser's drinking; I believe you stated that on direct examination?

A. I don't remember making that statement.

Q. Well is it true or not; did you talk to Jack McKay about it?

A. Yes.

Q. Did you suggest that he call off this trip?

A. I certainly did.

Q. What did he say?

A. I went to the captain of the boat to see about it.

Q. I am asking you what did Jack McKay say?

A. Well, he intimated that he had the trip planned and that they were going to make the trip. Yeiser wouldn't have called that trip off if it had broken his back, as far as he was concerned.

Q. Tell us what McKay said.

363 A. He wasn't in favor of calling it off; that's all.

Q. Didn't McKay state that he would look after Yeiser and see that he was all right?

A. I don't remember if he did; he may have made such statements; if so, he did a poor job of it.

Q. Do you deny that he made such a statement?

A. I don't say either way; I don't remember.

Q. What was the relationship between Jack McKay and Henry Yeiser as you observed it during the two months you knew Mr. Yeiser; were they friendly?

A. Yes, they were friendly.

Q. Were they pretty close friends?

A. I don't know about that; they were friendly. As I understand it, Jack McKay was a local representative or something of the kind of Yeiser.

Q. Did you see McKay aboard the boat quite often?

A. I don't know how many occasions I saw him; I saw him relatively a moderate number of times.

Q. You don't mean every time you went aboard, but you did see him there two or three times?

A. Every three or four days, something like that, I would see him down there, but he wasn't there any more than three or four minutes at a time; he would drop in and out.

Q. Do you state positively that the Friendship II made no trips down in the Keys for the period of two months that you attended Mr. Yeiser?

364 A. I did not make any positive statement of that kind at all; I don't know if the boat left or pulled anchor; I knew that the boat pulled anchor because it moved out, but as far as making the trip I cannot say definitely that it made a trip or didn't make a trip.

Q. Don't you know that it could have made twenty trips?

A. No, not twenty trips.

Q. Could it have made five trips?

A. No, it couldn't have made five trips or two or three trips, or anything of the kind; it may have shoved off and gone out for a half a day or something like that that I don't recall to memory, but as far as making trips, they were not gone from under my care during that time, sir.

Q. You stated on your direct examination that when you got to the boat on the morning you found these young ladies between eight and nine o'clock,—can you make that more definite by referring to the record which you made on that date?

A. Well, I can explain it this way; this says, "Called to boat at 8:00 A. M." Mr. Mershon, I had gotten up, as I stated, after a heavy night before. As far as looking at the time, I didn't look at the time; I don't remember exactly the time, but I know it was early when I got up and around.

Q. If it were important to you to know the time and you had to fix the time, you would fix the time as 8:00 A. M.?

A. If it were important to me to set the time, that would be a different matter, but that wasn't anything of any particular importance.

Q. Is there any other inconsistency or error
365 in this record?

A. That is not inconsistent at all.

Q. You now say it is between eight and nine?

A. Probably between eight and nine o'clock.

Q. It could have been nine o'clock?

A. It could have been nearer nine than eight.

Q. In that event, this "8:00 A. M." on this record would not be correct?

A. That would be a fallacy in that case, sir.

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The Court:

You may proceed.

(By Mr. Mershon):

Q. Dr. Howell, when you came into the hospital on the night of March 2nd and found Dr. Harris there with Mrs. Just, did you note the records of the case and observe that Dr. Foxworthy had given some orders?

A. I didn't note the records of the case but I found that he had given some orders; by the presence of the oxygen tent I figured that.

Q. You had not ordered it?

A. No.

Q. You had given the same mixture during the morning but you had discontinued it?

A. I had given it relatively throughout the morning but it was discontinued at such time as thought advisable.

Q. Did you order it immediately removed when you came in and found it being used?

A. No, I didn't order it immediately removed.

Q. Did you call Dr. Foxworthy and ask him what he was doing on the case?

A. It wasn't my place to call him; I didn't call him; he was supposed to call me, as I was the one there first.

Q. You didn't talk to him that evening at all?

A. No, sir.

Q. Either by his call to you or yours to him?

A. No, sir.

Q. Did you then discuss with Dr. Harris the matter of Dr. Foxworthy being on the case and giving orders?

A. Yes.

Q. Did Dr. Harris tell you that he had talked with Dr. Foxworthy that evening?

A. No, he didn't.

Q. You did not know then that Dr. Harris may have been in communication with Dr. Foxworthy?

A. No.

Q. I believe you said on direct examination that it was a case of two heads being better than one?

A. That is true, too, sir. You asked me why I called Dr. Harris. I asked the family—at least I asked Mr. McKay if he thought it would be better, if they would feel better about it if I called in someone, and I told him I would be glad to do it, because I welcomed consultation of a man that I feel is my equal or better.

Q. So you did regard the case as serious enough to justify calling in one of the topnotch internal medicine men to consult with you?

A. I offer anyone that as his privilege, and I feel that that would be another opinion, that they might probably be shaky about me because they didn't know me and—

Q. I understood you to say on your direct examination that you called him to discuss it with you because you thought two heads were better than one.

A. I said I talked with the family—when I say “family” I mean I talked with McKay, and that was the outcome of that. I felt that two heads were better than one, yes; I always do.

Q. You were willing to accede to the suggestions that Dr. Harris might make, were you?

A. If they met with my approval in handling the case, or we would discuss it out or thresh it out.

Q. You did as a matter of fact get together on it?

A. Yes, that is true, surely.

Q. Now don't you know as a matter of fact that after Dr. Harris on that evening gave this methylene blue which he counteracted with the injections of caffeine sodium benzoate?

Mr. Mehrtens:

If Your Honor please, I want to object to counsel for the petitioner making motions to the witness by shaking his head before counsel for the claimants has a chance

to interpose his full interrogatory. He may be doing it unconsciously.

Mr. Parmer:

Yes, I want to say that I did, that I shook my head this way (indicating), but I did it because my friend is saying "caffeine sodium benzoate", whereas the chart shows that adrenalin was given. I was merely trying to attract his attention.

Mr. Mershon:

They are both on here, and that's what I was trying to get at.

(By Mr. Mershon):

Q. "She was given ten m.m. adrenaline & 5 gr. caffeine sodium benzoate along with CO₂ (carbon dioxide), & CO₂ inhalations." After Dr. Harris had ordered that, after he had done that, you know as
369 a fact that he ordered her put back under the oxygen tent; don't you?

A. I don't think so; I don't know whether he did or not, but it was certainly something that would not hurt her; it is good for anybody.

Q. So you and Dr. Harris both approved what Dr. Foxworthy had ordered done for her that afternoon?

A. I don't know of anything else. As far as the oxygen tent is concerned it wasn't necessary but it didn't hurt her; it just caused her to pay fifteen dollars a day extra, that's all.

Q. Then you approved Dr. Harris' running up that cost of fifteen dollars a day which Dr. Foxworthy brought out—

A. I might approve or disapprove.

Q. Kind of like your promise; you had no—

A. No, it wasn't like the promise at all; I made no promise; just because one man said I made a promise is no sign that I made it.

Q. In other words, unless you admit them you say you didn't make them, and you now say that you neither approved nor disapproved use of the oxygen tent?

A. That is true.

Q. I believe you said that you yourself discharged Mrs. Just from the hospital on March 6th?

A. I don't know the date, but it was the day before she left.

Q. The day before she left?

A. Yes.

Q. Did you make any record of that discharge?
370

A. I think I did, sir.

Q. What kind of a record would you make?

A. A written record.

Q. In the hospital records?

A. Yes, sir.

Q. Would you also—

A. We also issue those orders; I wouldn't swear to that being a written record, but I did discharge her the day before, but whether that was a written or verbal order I don't know. I might say this for your information that those records are copy records there: I didn't write that order sheet there at all; that is a transcript record in someone else's handwriting. I wrote in the book.

Q. I understand that but in due course this should contain a copy of every order that you wrote in the book?

A. It should contain it; yes.

Q. It should be highly irregular if you wrote it in the book and it is not copied here?

A. Yes.

Q. I will ask you to examine this record, which is Claimants' Exhibit 9 and all of its pages, and state whether or not it shows any discharge by you of Mrs. Just on March 6th or another date?

371 A. It doesn't show any record of where I discharged her; it is marked that she was discharged by Dr. Foxworthy. May I state that this case wasn't Dr. Foxworthy's case in the beginning and he couldn't discharge her if she wasn't his patient.

Q. But the record as a matter of fact shows that he did?

A. Yes; he was on the case.

Q. And the hospital recognized his authority on the case?

A. The nurse on the case did. You can verify that by Sister Josephine; as we had some words regarding him coming on.

Q. Isn't it a fact that the records of the hospital don't show that you discharged her?

A. I don't know whether the records do or not, but that record there does not.

Q. This record shows that Dr. Foxworthy discharged her on March 7th and failed to show that you ever discharged her.

A. That is right.

Q. This record of the St. Francis Hospital also shows that Dr. Foxworthy was calling on her right along as you were calling on her throughout the entire period?

A. Yes.

Q. Isn't it a fact that in this discussion you had that Dr. Foxworthy took the position that he was not only employed on the case but was in charge of the case?

A. If so, Mr. Mereshon, he was suffering from a delusion.

Q. Did he have that delusion?

A. If so he didn't intimate it to me.

Q. He didn't tell you that he was employed by the family?

A. No, he didn't.

Q. Employed by the family to attend Mrs. Just?

A. No.

372 Q. In this discussion you had with him he did not say that he was employed on Mrs. Just case by the family?

A. No, sir; he merely told me that he was a friend of the family.

Q. I believe you stated that after Mrs. Just was discharged, that is to say three or four days afterwards, you called where you had been told to call, is that correct?

A. Yes, sir.

Q. Who had told you to call on Mrs. Just after she left the hospital?

A. I had received her address from Mrs. Bischoff.

Q. When did you receive that?

A. Before she departed from the hospital.

Q. How long before?

A. I don't know; probably a day or so.

Q. Before you discharged her?

A. Yes.

Q. Not at the time you discharged her?

A. Not at the time, no.

Q. Did Mrs. Bischoff request you, after you had discharged Mrs. Just, to continue to call on Mrs. Just?

A. A request was not necessary; I considered that it was my privilege to call on that patient at home, so long as I felt she needed my services.

Q. Then you felt that she needed your services three or four days after you had discharged her from the hospital?

373 A. Not particularly, sir; I merely went to check up to see that she was doing all right, and that's all. That was my final call.

Q. I don't want to be unfair to you, but I want to get this straight, doctor: Are we to understand that you called on Mrs. Just three or four days after she left the hospital for the express purpose of seeing her and

without any necessity for rendering medical services to her?

A. I don't know what you are driving at. But, as I stated, I considered it my privilege, and any other doctor considers it his privilege to visit a patient after discharging her from the hospital.

Q. I am driving at this, doctor: Isn't it a fact that when you say you discharged her from the hospital that you then realized that her condition was such that you should follow her up and check up on her and see how she was getting along?

A. No, I merely wanted to terminate the case; that is all I wanted to do, just to be sure that she was all right, and I felt in my mind that she was all right, and I wanted to be sure, and that was that.

Q. Then you had not terminated the case when you discharged her from the hospital?

A. Virtually I had.

Q. Where did you find this address, this Villa, that you say had been given to you as the address where Mrs. Just was living with her aunt, Mrs. Bischoff?

A. Where did I find it?

374 Q. Yes.

A. I didn't find it; it was given to me.

Q. We will not quibble about language; doctor; where did you find the place located?

A. Up on the beach, way up on the beach, sir.

Q. Well, was it beyond the St. Francis Hospital, north of St. Francis Hospital?

A. That, I cannot say. I can go to the place, but as far as giving you the exact location I don't know that. I will be frank with you; I cannot tell you the exact location, but I can take you to the place, if you care to go. Unfortunately, sir, I do not try to remember addresses.

Q. How far was it from St. Francis Hospital to the place where Mrs. Just and her aunt and Miss Grunow were living?

A. I don't know, because I didn't drive from the hospital over there.

Q. Don't you have some idea that it is not very far?

A. No. If you told me it was probably a couple miles or something like that, that would be all right, but if you told me it was a hundred yards, then I would say you are wrong. If you say it is two or three miles, that is all right.

Q. If I said it was about a half mile, would that be right or wrong?

A. I cannot say, because I don't know the Beach that well.

Q. Now as a matter of fact, doctor, Mrs. Bischoff, the aunt, was over at the hospital every day with Mrs. Just?

A. As far as I know.

Q. It did serve her convenience to have Mrs. 375 Just on the Beach rather than across the Bay over here at the Jackson Memorial Hospital, didn't it?

A. I don't know that the matter of convenience to the family is given any consideration when you are figuring on the well-being of your patient.

Q. Did this patient's well-being suffer from having gone to the St. Francis Hospital rather than to the Jackson Memorial Hospital?

A. I can't say that it did.

Q. That didn't enter into it?

A. Not with me.

Q. But with the patient it made no difference, her well-being was still taken care of; her well-being could be taken care of in one place just as well as another, or the other?

A. It may have and it may not have.

Q. Please answer.

A. That is what I had anticipated, not what actually happened; to me it was a matter of some convenience.

Q. Can you say that it did?

A. No, sir.

Q. Did you tell Mr. McKay or the members of the family that it would make any difference?

A. No.

Q. So it finally resolved itself into a question of convenience having Mrs. Just up near where her aunt was living on the Beach?

A. Yes, but this is the first I heard of that.

Q. Did you know that she lived on the Beach?

A. I didn't know where she lived at that time; I had no more idea than a man in the moon.

Q. Mr. McKay didn't express that thought to you?

A. No.

Q. Mr. McKay directed to have her taken to the St. Francis?

A. He suggested it; he thought it was better and it would be away from the newspaper reporters and the like.

Q. In fact, it was close to where she was living, wasn't it?

A. I guess so.

Q. Now on this evening when you called at Mrs. Bischoff's to see Mrs. Just, doctor, you didn't see her, did you?

A. No, I didn't.

Q. And you said that you dropped in just to see how she was getting along?

A. That is right.

Q. You didn't see Miss Grunow?

A. No.

Q. You don't know whether Miss Grunow had been to a cocktail party or whether she had been—

A. I only quoted, sir, what I was told; that the lady was retired; that she had been to a cocktail party and had retired; that she was indisposed.

Q. "Indisposed", what do you mean by that?

A. That she had retired, I mean, and not receiving visitors.

Q. Let's come back to the chart in your handwriting, doctor. Before looking at the chart I will ask you what is the medical definition of the term "aphasia", as you knew it and as it is generally understood?

A. The definition of aphasia, sir, is inability to express thought in words; there are various types and kinds of aphasia, either by word, sign or writing, and inability to express those things.

Q. To what is that inability related; is it on the central nervous system?

A. Yes.

Q. It is brought about by some abnormal condition affecting the central nervous system, is it not?

A. It may and it may not be.

Q. It has to be since it depends on the central nervous system.

A. Did you ever hear of a hysterical aphasia?

Q. No.

A. There is such a thing.

Q. Is that related to the nervous system?

A. Hysteria?

Q. Yes.

A. Yes, it is and it is not.

Q. In the layman's language it means failure to control your nerves?

A. Yes, if you want to put it in the layman's language.

Q. In your handwriting on page 9-C of Claimants' Exhibit 9 is the entry, entered as of two o'clock P. M., on March 3, 1936, the day after Mrs. Just entered the hospital: "Patient seen. Waked out of sound sleep. Color good after removal from oxygen tent." Was she still in the oxygen tent on the 3rd?

A. Yes, sir.

Q. Following that are the words: "Patient mentally apparently quite clear; mind active and alert; however, there is a definite aphasia present".

A. That is a badly put word, if you want to dwell on that. I refer to what you see in the last line there, as I tried to explain the thing there; I didn't go into detail.

Q. "She is quite talkative and pleasant; does not recall happenings of yesterday".

A. That is where my aphasia referred.

Q. Doesn't that last line make a complete thought or statement within itself: "She is talkative and pleasant; does not recall happening of yesterday". Doesn't that convey exactly what you meant to say?

A. Yes, sure.

Q. So it was not necessary to have used the word "aphasia"?

A. No.

Q. Do you now say that the word "aphasia", with its technical and its medical significance as used by you in that chart over your signature, is surplusage and didn't belong in there at all?

A. The word "aphasia" is not essential in there at all.

Q. Is it untrue?

A. It is not untrue; it is just an honest mistake.

Q. It is another one of these fallacies we have been talking about?

A. It is one of those hurried writings.

Q. Now as a matter of fact she was having difficulty in getting her words together to express her thoughts?

A. Not when she wanted to talk to me.

Q. What?

A. Not when she wanted to talk to me. She was pugilistic, or she resented my presence for a couple of days there; that is all. Read the rest of the record there and you will find it.

Q. Of course the word "pugilistic" doesn't have the same definite meaning that aphasia does?

A. That is right.

Q. There is no question about the medical significance of the term "aphasia" as understood by practicing physicians?

A. Just how do you mean that; in other words, there is no question as to what it means?

Q. Yes.

A. Surely not.

Q. Is there any question but that a doctor and physician or the staff of the hospital in reading that chart would interpret it over your signature to state positively and definitely that this lady at that time, at two P. M., on March 3rd, 1936, had a distinct difficulty in talking?

A. It still would mean aphasia.

Q. All right; what does aphasia mean?

A. It means an inability to express thought by speech, writing or sign; that is all it means.

Q. So by reading that chart anyone who knew
380 the definition of aphasia would understand that on that dated, after seeing this patient, you were stating that she had an inability to express her thoughts; is that true?

A. I doubt it very seriously if they read the line above, where I said she was very pleasant and very talkative, sir; I think we are quibbling over a word.

Q. If so, doctor, I would like to be enlightened, and I know that the Court would, too.

A. All right.

Q. I am asking you if there is anything about these words, "she is talkative and pleasant; does not recall happenings of yesterday", that would imply that while talkative and pleasant that she was not having trouble in expressing her thoughts?

A. There isn't anything in that that would imply that she wasn't having trouble.

Q. The use of the word "aphasia" preceding it, assuming that that was not intended to imply the thought—

A. I meant of the day before, however, that is a minor detail, sir.

Q. In other words, you say your report is inaccurate and untrue?

A. No, I don't say my report is inaccurate and untrue.

Q. You mean it is inexact?

A. I say there are features of it that are inexact.

Q. I believe you just stated that her attitude was pugilistic on this occasion?

A. Well, that word was used for lack of a
381 better descriptive adjective to use, sir; I might say a better term would be to say that she was apparently resentful of my presence for a couple of days, and my conclusion was that it was because Dr. Foxworthy had talked with her.

Mr. Mayne:

We ask that it be stricken out.

Mr. Parmer:

I will consent to that.

The Court:

The statement will be stricken.

(By Mr. Mershon):

Q. Doctor, isn't your statement that her attitude was pugilistic at variance with your written statement made at the time to the effect that she was quite talkative and pleasant?

A. That was a day or so afterwards.

Q. When did she become pugilistic?

A. A day or so later.

Q. A day or so after—

A. It was during her stay there in the hospital that she was resentful. Let's put it that way.

Q. Did you make a note of that attitude?

A. No.

Q. Nevertheless you say that attitude existed?

A. Yes, sir.

Q. If you didn't make a note of that then the chart is defective and incomplete, in failing to record that important symptom?

A. If I went in there and put down all of my
382 positive and negative findings you would have a volume to read. We merely put down the high spots.

Q. These are your well considered crystallized high spots culled from all of your observations?

A. Probably they were very hurriedly written; in other words, hurriedly written to convey the meaning; see?

Q. To convey a picture of the patient's condition?

A. That is right.

Q. You stated on your direct examination, doctor, if I recall correctly, that you ordered discontinuance of the use of sedatives for Mrs. Just, is that correct?

A. I don't say I ordered it; I recommended it; it is on the chart there.

Q. I understood you to say that there was a difference of opinion between you and Dr. Foxworthy on that point, and that you had talked about this situation.

A. I don't think I made a statement like that, nor did I discuss the merits or otherwise of this case with Dr. Foxworthy from a chronological standpoint. I didn't discuss whether she needed sedatives or not. I went into the hospital and found that she had sedatives ordered there, and I wanted to get them out.

Q. Then you made that order here?

A. I say again that I don't think any such order appears, but I can show you a writing to that effect.

Q. Show us.

A. Here it is: "3-5-36—Patient sleeping upon my visit—apparently progressing nicely. I feel that all sedatives should be discontinued and give the
383 mental condition a chance to clear. Sedatives should be used only if nerve condition necessitates same".

Q. At the time you wrote that did you regard her nervous condition as requiring sedatives?

A. No. Any of us may or may not need a sedative if we are under strain at night to get to sleep. I didn't feel that her condition warranted it, but I gave them the privilege of using it if necessary, and we of course leave things of that kind more or less to the nurse.

Q. Do you recall whether you later found it necessary to order sedatives for her because of her nervous condition?

A. I don't recall whether I did or not.

Q. Nevertheless, doctor, didn't you state on your direct examination that on the 6th of March you ordered neurocene for the patient?

A. I don't know, sir; I can look at that and tell you, sir, if you don't mind. On the 4th day of March neurocene was ordered.

Mr. Mayne:

And also on the 6th.

The Witness:

It was ordered on the 4th, the only order that was issued for it, and I gave her what we know as P. R. N., meaning "when absolutely necessary for nervousness".

Mr. Parmer:

You mean, doctor, that "P. R. N." means "when absolutely necessary"?

The Witness:

Yes. I can't give you the Latin term for it, however.

384 (By Mr. Mershon):

Q. If you did state on your direct examination that on March 6th and March 4th you prescribed neurocene at that time for rest, you were mistaken when you undertook to say that you made such a prescription on March 6th—

A. No, I said I ordered it on the 4th.

Q. Did you order it on the 6th?

A. I did not.

Q. All right; that will suffice for the record. Then your so-called order regarding sedatives was nothing more than leaving it to the nurses to give them to her if she needed them?

A. You put a very loose terminology on that, sir.

Q. All right.

A. No, it is not that way. We leave a thing like that up to the judgment of a nurse who is well trained with definite instructions regarding it. We don't just say, "Give it to them if they want to have it". They must have a definite reason for giving anything that is left that way.

Q. If the condition warrants it.

A. If the condition absolutely warrants, yes.

Q. When you were taking Mrs. Just to the hospital in the ambulance, at which time you say she vomited, what was it she vomited from her stomach?

A. Just the stomach content.

Q. Was it a frothy mucous?

A. It looked like portions of undigested food.

385 Q. You mean as late as 2:45 when you were going to the hospital?

A. Yes, it looked like portions of undigested food; the stomach content, as we say.

Q. Had she been vomiting more or less regularly from eight o'clock in the morning?

A. Not regularly but at intervals.

Q. Did you see any frothy mucous about her mouth?

A. All stomach content carries a pretty good quantity of mucous in it.

Q. And froth?

A. Not froth but mucous.

Q. Did you observe any froth?

A. No, I didn't.

Q. Can you recall or say there wasn't any?

A. Yes, I can.

Q. You say there was no froth?

A. That is right; not in the form that you are putting it; you asked me if I saw any froth coming out of the mouth.

Q. I am also asking you if you saw any bubbly or frothy content that came out of her stomach?

A. All stomach content more or less is bubbly; all mucous carries particles of undigested food.

Q. Doctor, don't you eventually, when you haven't had anything to eat and start vomiting, exhaust all of your stomach matter?

A. No, you can vomit fecal matter.

Q. Did you observe any of that in this vomiting?

A. No, I didn't observe any of that fecal matter, that is digested content.

386 Q. When you say that the nurses got off the case just before the trip was taken to the Keys, do you mean that they resigned permanently or that they just quit for the period that he was on the trip?

A. It was permanent as far as they were concerned.

Q. Was one of those nurses the nurse that came aboard the boat the morning she got in from the trip with these sick ladies aboard?

A. Yes.

Q. That was Miss Norwood?

A. Yes.

Q. Did the other nurse come aboard?

A. I think she did; yes, I know she did.

Q. I believe you say that not only had Mr. Yeiser requested both the nurses and you to accompany them on the trip, but had actually offered to pay them and pay you for doing so?

A. That is right.

Q. At the same time he extended you the invitation to be his—you and the nurses—guest along with the other guests on the trip?

A. No; we were just to be one of the party, just like any of the rest of them. As long as I am working for a man I consider myself part of the help.

Q. Did he extend you an invitation to be a part of the help or an invitation to be his guest?

A. He asked me to accompany him on the
387 trip, and I was to be compensated for my services.

Q. And you were to be his guest on the trip at the same time?

A. Well, you can call it a guest or you can say "personal physician" or whatever you want to. I was to be paid, sir, and I was to be in the party or a part of the party.

Q. And to look after them if anything went wrong?

A. Absolutely, or anyone else who was on the boat.

Q. And the young ladies, who were the nurses, were also extended an invitation?

A. Yes.

Q. And you were to look after him if anything went wrong or needed looking after?

A. Yes, sir.

Q. So there was no apparent desire or intention on the part of Mr. Yeiser to conceal anything which might happen on that trip, or to cover up what he apparently intended to be a trip for his friends, was there?

A. No, sir.

Q. Do you say that is right?

A. That is right.

Q. Doctor, have you been paid for the services you rendered to Miss Grunow and Mrs. Just?

A. I have.

Q. Who paid your bill?

A. I can't tell you the name; it was some insurance company.

Q. Was the bill rendered to the Yeiser
388 estate?

A. My first bill was rendered to Mrs. Just and was mailed to the Beach, and then in turn I mailed a bill to the insurance company.

Mr. Mershon:

I want to say to counsel that this is not a jury case. That is not the answer I intended to elicit.

Mr. Parmer:

Your Honor, I want you to know that I am defending for the insurance company; that is the reason I am here.

Re-Direct Examination.

By Mr. Parmer:

Q. Dr. Howell, when you were being questioned by Mr. Mershon with regard to your refusal or neglect to co-operate in giving a written statement, you gave certain testimony which indicated that there was a distinction in your mind between talking to Mrs. Just, the person whom you treated, and talking to lawyers. I want to know whether you have such a distinction in your mind?

A. The only person or company or anyone that asked me in any way regarding the thing has been some legal

firm in St. Louis; and, as Mr. Mehrtens says, he talked with me. I am sorry I didn't remember it, though. As far as having any feeling regarding one side or the other, I can only say, as I said before, that I am sorry that I got mixed up with it in any way, shape or form; however, I saw in the beginning the way things linked up, and I didn't want to be messed up on the side where I knew was wrong.

Q. What do you mean by that?

389 A. Well, just everything that happened at the hospital and so on and so forth, and the suggestion Dr. Foxworthy made regarding the suit and so on and so forth. I had not the slightest idea of this case or that I would be mixed up in any case at all. Had I known the trouble that was coming I probably would have made the records a little different. Those records went to the file just as they actually were, and I talked with the aunt and she assured me the same thing.

Q. Well now it so happens, Dr. Howell, that you did—I believe you said in your testimony—give a deposition for the counsel for this boat and, as we have already said, the insurance company—

Mr. Mershon:

We object to that premise of the question. I am sure counsel is mistaken. I don't think it is true in point or fact that he gave a deposition. I presume that what counsel means is a written statement.

Mr. Parmer:

By deposition I mean that he made a statement and that it is in question and answer form.

Mr. Mershon:

You mean orally, without a record being made?

Mr. Parmer:

It is not a deposition taken de bene esse pursuant to the statutes of the United States, but it is in the form of a deposition, in question and—

Mr. Mershon:

Counsel's statement presupposes something which the witness has said, something that is not true; it presupposes that the witness gave a written statement, while the witness has testified that he never gave a written statement to Mr. Mehrtens or to counsel representing Mrs. Just.

390 Mr. Parmer:

I understood that the witness said in his testimony that he had given a deposition.

The Witness:

May I say something?

Mr. Parmer:

Just a moment.

Mr. Mehrtens:

Do you mean a written statement or oral statement?

The Witness:

Oral.

(By Mr. Parmer):

Q. In that statement did you inform counsel for the defendants with regard to what you knew about the case?

A. Yes, I told them just exactly what I knew, and that was that.

Q. What I want you to do is to explain to the Court why you talked it over with counsel for the defendants

and you wouldn't talk it over with counsel for the plaintiff. I want you to be perfectly frank and just tell the whole story.

Mr. Mehrtens:

If Your Honor please, I want you to warn the witness not to give you his opinions or conclusions. I don't want him to give any conclusions about the merits of the lawsuit or anything of that sort.

Mr. Parmer:

I hope he won't.

The Court:

I think the witness understands the question.

A. Gentlemen, and Your Honor, I thought that I had made myself clear, because I knew of the fact, as I stated before, the way the thing was set up, how it existed, and I didn't care to be mixed up with that side of the case; that is all there is to it.

Q. And you preferred to be mixed up with the other side?

A. If I had to be mixed up with any case at all, Mr. Parmer.

Q. Well, now, Dr. Howell, your attention was
391 called here to a certain report concerning a blood-count. It seems to be on page "E" of this Exhibit 9. Is that the page?

A. Yes.

Q. Well, now, Dr. Howell, was that blood-count made by you or by someone else?

A. That was made by the hospital laboratory.

Q. I think you said that such a blood-count would show whether there was a normal amount of hemoglobin in it.

A. Yes, sir.

Q. And what does it show?

A. It shows the hemoglobin as 87%.

Q. Is that normal?

A. Well it is certainly normal for any female, and it is quite normal for a male; in other words, the hemoglobin runs from 85 to 100%, and we consider that normal.

Q. What was the date that was taken?

A. That was on 3-5-36.

Q. March 5th?

A. Yes, sir. The red count is also normal; it is practically 4,000,000. That is a bit higher than usual for a female.

Q. Now can you tell us, Dr. Howell—you might as well keep that record—when it was that you first got in touch with Dr. Harris on March 2nd?

A. When it was I first got in touch with him?

Q. Yes, if you can remember.

392 A. I am sorry, but I can't recall definitely what hour of the afternoon or what time it was I got in touch with him.

Q. What time was it when you got to the hospital and found out that the nurses had already treated Mrs. Just by an injection?

A. That was probably somewhere around nine o'clock, somewhere in that range; I don't know just what hour it happened.

Q. After you found that out did you have a discussion with Dr. Harris with regard to the case?

A. Yes, sir.

Q. And you told him your views?

A. Yes, sir.

Q. Did you tell him your views with regard to the possibility of alcoholism?

A. Yes, sir.

Q. And with regard to what had happened on the boat, with regard to suggestions of carbon monoxide poisoning?

A. Yes, sir.

Q. Now let me see this report of Dr. Harris here. Is this what Dr. Harris wrote down after you had had your talk with him:

"Note: Physical examination is essentially negative. In view of the history it seems likely that the patient had a case of carbon monoxide poisoning. There is undoubtedly a functional element present."

Mr. Mayne:

Just a minute. We object to that unless this witness knows that Dr. Harris wrote that statement. The witness has already said he couldn't recognize Dr. Harris' statement.

393 The Witness:

May I say, sir, that I do know that he did his writing on the chart; I can say that for you.

Mr. Mayne:

Did you see him write it?

The Witness:

I didn't see him write that. I know that he did his writing on the chart as I was leaving the hospital.

Mr. Mayne:

You didn't see him write it?

The Witness:

No, I couldn't swear that he wrote it.

Mr. Mayne:

You don't know if this is his writing?

The Witness:

No, sir.

Mr. Mayne:

Someone else may have written that?

The Witness:

Sure, however, it is initialed by him.

Mr. Mayne:

Mr. Palmer's question calls for a conclusion of the witness.

Mr. Parmer:

I will withdraw the question, of course.

(By Mr. Parmer):

Q. Well, doctor, I am going to ask you to assume for the moment that Dr. Harris did write this in the record as it appears on March 2, 1936, as follows: "Note: Physical examination is essentially negative. In view of the history it seems likely that the patient had a case of carbon monoxide poisoning. There is undoubtedly a functional element present." Tell me, sir, is that a diagnosis of carbon monoxide poisoning?

Mr. Mershon:

We object to the question on two grounds: First, it assumes something that has not been proven—

Mr. Parmer:

What is that?

Mr. Mershon:

That Dr. Harris wrote that on the chart.

Mr. Parmer:

I thought we stipulated on that at the beginning.

394 Mr. Mershon:

I will withdraw the objection, but will object on the further ground that it calls for a conclusion of the witness as to whether or not that is the diagnosis. That is a matter for the Court to determine. The instrument speaks for itself.

Mr. Parmer:

As a medical man he can tell whether a doctor is making a diagnosis or not, or whether he is giving an opinion based on previous history.

Mr. Mayne:

He is asking Dr. Howell to state what was in the mind of Dr. Harris when he wrote that.

Mr. Parmer:

No, I beg to differ with you. I am asking him to state what a statement like this on a hospital record means to a reasonable doctor who knows his business.

Mr. Mayne:

Dr. Harris will be able to explain what he had in mind when he wrote it, but you are asking this man to say what was in the mind of Dr. Harris.

Mr. Parmer:

Mr. Mershon was asking the doctor about this very thing.

The Court:

The objection is overruled. Let him answer the question.

A. What is the question.

Q. I want to know whether that note which I asked you to assume was made by Dr. Harris, constitute a diagnosis of carbon monoxide poisoning?

A. No, sir, I would not consider it so.

Q. Will you explain what this means, doctor, these words: "There is undoubtedly a functional element present." What does that mean to a doctor as explained in terms that the layman can understand?

A. I am sorry to say that I could not tell you what Dr. Harris might have had in mind when he wrote that "functional element" there.

Q. It doesn't mean anything to you?

A. It doesn't mean anything to me, sir.

Q. Now in answer to one of Mr. Mershon's questions I think that you agreed that Dr. Harris concurred in your diagnosis; do you remember that?

A. I don't know just—

Q. Do you remember that in answer to one of Mr. Mershon's questions you said that Dr. Harris had concurred in your diagnosis?

A. Yes. I mean that he did to me. As I said, I don't know what is written there and I don't care.

Q. What I want to know is what you meant by that when you said that Dr. Harris concurred in your diagnosis?

A. He agreed that my interpretation of the case was in all probability right, and he saw what I had given and he thought that it was very good.

Q. When you say that you were right do you refer to the alcoholic conditions about which you have already testified?

A. He knew of that also; I discussed that very much with him.

Q. In the morning on the boat while you were looking after Mrs. Just on how many occasions do you know that she was given oxygen and CO₂?

A. Well, I can only swear to that time that I gave it to her; I gave it to both of them personally, and the giving of it at that time wasn't over five minutes.

Q. What I want to know is do you know of any other occasion on the ship when they were given this oxygen besides the time that you personally administered it?

A. I know it was given by the nurse.

Q. Later on?

A. Yes.

Q. Do you know how many times in all?

A. No, sir.

Q. Doctor, you have been asked certain questions with regard to your use of the word "aphasia" as appears in this record. Now one of the questions that was put you used the words "Difficulty in expressing your thought" as a synonym for the word "aphasia". Now will you tell in your opinion what is the real technical meaning of that word?

A. A real aphasia is inability to speak a word; a writing aphasia is an inability to write and so on; as I said before, here are two or three different forms of aphasia, sir.

Q. Is the emphasis on "inability"?

A. Inability to express your thoughts.

Q. Does it imply in any way an inability to express it with difficulty?

A. No; it doesn't.

397 The Court:

I always labored under the impression that aphasia was loss of memory. I suppose I am wrong.

The Witness:

I refer you to Gould's medical dictionary, sir.

(By Mr. Parmer):

Q. Doctor, I note that you have in your record of findings on page 9-A of this exhibit that Mrs. Just had a moderate cyanosis.

A. Yes, sir.

Q. Was that around the lips?

A. Yes, in the lips and around the mouth.

Q. Can you tell us whether such a condition can be caused by the excessive use of alcohol to the extent where a person becomes overcome by its use?

A. Yes, sir. If a person passes out drunk they fail to airate their lungs and that causes a cyanosis.

Q. What is the color which is produced when one's blood becomes combined with carbon monoxide gas; what is the color of the blood?

A. It is cherry red.

Q. Do you mean by that a brighter red than the ordinary color of blood?

A. Yes, it is a brighter red. The normal arterial blood is red and the venous blood is blue, and the description of your carbon monoxide with hemoglobin is cherry red in color.

Q. And when persons have such carbon monoxide poisoning and that is combined with the hemoglobin of the blood, does that show 'cherry red in color?

A. Yes, sir.

398 Mr. Mershon:

Just a few questions.

Re-Cross Examination.

By Mr. Mershon:

Q. Dr. Howell, do you mean to tell the Court that these ladies, Mrs. Just and Miss Grunow, at the time you saw them on March 2nd, 1936, were not suffering from carbon monoxide poisoning at all?

A. Mr. Mershon, I think the alcoholism had the biggest part of the deal.

Q. The biggest part?

A. Yes.

Q. What do you think had the smallest part?

A. Mr. Mershon, you and I might walk through a garage and we will get a carbon monoxide poisoning, so to speak, due to the condensation from the engines in the garage, so if you say "slight", maybe yes and maybe no."

Q. Well, do you mean to say that they did not have any carbon monoxide poisoning at all?

A. I don't say that. I say maybe yes and maybe not.

Q. You won't commit yourself one way or the other?

A. I beg your pardon. It is not a question of whether I want to commit myself or not. I merely say that they may or may not have had it, but I felt that the other was the thing that was most significant.

Q. Was there the slightest possibility in your mind when you saw them for the first time that they may have had carbon monoxide poisoning?

399 A. Oh, they may have; they may have had a lot of other things.

Q. Did it occur to you that they might have in view of the case history they gave you?

A. That was the thing I had in mind from the time I went on the boat.

Q. Why didn't you make a blood test to find out?

A. Because I didn't think it was necessary; they got along too well; they got along well; they were not sick individuals.

Q. Do you mean to say they got along well with what you thought they had?

A. I was never for a minute leary that either of the women wouldn't come out of that condition.

Q. And what condition was it, alcoholism or carbon monoxide poisoning?

A. I felt they were both suffering from alcoholism.

Q. Did you feel that they were not suffering from carbon monoxide poisoning?

A. They may or may not have had some carbon monoxide poisoning; I won't say they didn't; but I do feel that the other was the major thing.

Q. But in view of that history you made no effort to find out whether they had carbon monoxide poisoning?

A. No, sir. A carbon monoxide poisoning patient when they get into normal atmosphere will clear up immediately.

400 There is one of two things they are going to do; if they get enough of it they are going to die, and they are going to die right quick.

Q. So you figured there at that point that they would get well of the carbon monoxide poisoning?

A. I didn't figure much that they had it; I figured that they would get well.

Q. If they did have it?

A. Irrespective of what they had I figured they would get well.

Q. With respect to the alcoholism, doctor, you figured they would get over it?

A. Yes, just give them a little time and they would sober up, yes, sir.

Q. In spite of all of that you plainly falsified the records of the case in the hospital?

A. If you will have it that way, sir.

Q. Do you further say that Dr. Harris knowingly concurring in your view that the ladies were the victims of alcoholism and not suffering from carbon monoxide poisoning in any way, joined with you in confirming what he knew to be a false diagnosis upon the records of the case?

Mr. Parmer:

He is a victim of his own objections. He is asking this witness to characterize the testimony of another doctor.

The Court:

The objection is overruled.

Mr. Mershon:

Read the question.

(Thereupon the preceding question was read by the reporter as above recorded).

401 A. I didn't talk to Dr. Harris.

Q. Did you say that Dr. Harris knew that your diagnosis of this case was alcoholism and not carbon monoxide poisoning?

A. He knew my views on the case.

Q. What were those views he knew?

A. I expressed them.

Q. Tell us what they were.

A. Alcoholism was the major one.

Q. You told him that?

A. Yes, sir.

Q. Did you also tell him that you were diagnosing it for the record as carbon monoxide poisoning?

A. No, sir; that was already written down.

Q. Did you explain to him why you were making a different diagnosis?

A. No, sir.

Q. Isn't it a fact that you simply told him that you suspected it might be alcoholism?

A. No, I told him very firmly what I thought.

Q. What did you tell him?

A. I told him firmly what I thought.

Q. What did you say?

A. That alcoholism was the main thing.

Q. Was that before his examination?

A. That was after his examination and before I had written this.

402 Q. Did he agree with you or disagree?

A. Apparently agreed with me.

Q. What did he tell you?

A. He told me that he thought I was right on it, and that my orders that were written in the beginning were perfectly correct, sir.

Q. Did he tell you that you were right in your views that it was alcoholism?

A. He told me that I was right in my views, but he didn't say alcoholism and he didn't say carbon monoxide or anything else; he just said I was right in my views.

Q. You had expressed to him over the telephone the history of carbon monoxide poisoning?

A. I told him the whole history. I gave him the whole history so he could have the same view I got.

Q. You had already upon the record entered your final diagnosis of carbon monoxide poisoning?

A. The final diagnosis doesn't go to the chart until the case is discharged, until the patient is ready to be discharged from the hospital. I never wrote a final on the chart, I know that; I have never seen the chart until about three days ago.

Q. But you had written on the chart at that time "apparent carbon monoxide poisoning"?

A. I think it is written there.

Q. You say that Dr. Harris concurred on the record with your view of apparent carbon monoxide poisoning, yet privately agreed with you that it was not true?

A. That is all right.

403 Mr. Parmer:

I object to the question. He is cross examining him on what Dr. Harris said.

The Court:

The objection is sustained.

Mr. Mershon:

I will withdraw the question and reframe it.

(By Mr. Mershon):

Q. Yet you say that Dr. Harris agreed with you privately that it seemed like it was an alcohol case, he neverthe-

less on the record agreed with you that it was likely a carbon monoxide poisoning case? Is that the statement you make to the Court?

The Court:

I didn't understand him to say that. He said that Dr. Harris did not mention alcoholism and did not mention carbon monoxide poisoning, but stated that he agreed that his treatment of the case was right.

The Witness:

That is right.

(By Mr. Mershon):

Q. What, doctor, is the meaning of cyanosis, medically speaking?

A. A bluish or blue discoloration of the skin or mucous membrane.

Q. Can it be black or different shades of blue; does it have to be any particular shade?

A. Varying in accordance with the lack of oxygen.

Q. Could it be red spots?

A. No, sir.

Q. Where the skin is discolored due to lack of oxygen caused by carbon monoxide combined with the hemoglobin in the blood, would you call that discoloration cyanosis?

A. No, you wouldn't call that cyanosis; it is a very bright color.

Q. Although it was caused by lack of oxygen?

A. Yes, that is right.

Q. Isn't it true that this discoloration may be violet, dark red or other colors?

A. Not that I know of, sir.

Q. If in this same Bulletin of the Department of Interior, Bureau of Mines, Reports of Investigations by R. R.

Sayers and W. P. Yant, May, 1923, Revised, May, 1935, in dealing with the subject of "Pathology", they say:

"The color of the skin of persons poisoned by carbon monoxide differs from the color of persons dying from other causes. Many show rose-red spots on the face, neck, breast, and limbs, and others dark red or violet; but the non-appearance of such spots should not be taken as indicating the absence of carbon monoxide poisoning. The face may be bright red, and doubt as to death having taken place is often expressed by laymen. The color of the skin between the spots is remarkably similar to that which appears after poisoning by benzol, potassium cyanide, or the action of cold on a corpse. The color of the skin corresponds to changes in the coloring of the blood. This is usually a bright cherry red, but it has also been found as a blackish red or entirely black. Two persons overcome under the same circumstances may show bright red blood in the case of one and very dark red or black in the case of the other. The coagulation power of the

blood is not changed. Reddening of the digestive tract with ecchymoses, effusions, or extensive hemorrhages is present in many of the cases. The peritoneum may appear bright red in color; ecchymoses have been found on the peritoneum. At times there are degenerative changes found in the walls of the blood vessels. There are no marked characteristic changes in respiratory passages. However, it is worthy of note that the larynx, trachea, and bronchi may be covered with viscous, thick, frothy mucus; or foreign matter, such as stomach contents, may be found in these passages; and all of which, even to the finest bronchi, may show a bright red to black-red color corresponding to blood changes."

Do you disagree with that?

A. My dear sir, I quote as my authority—and the only I have particularly read—Dr. Yewdall Henderson, and

Dr. Henderson has probably done the foremost work in the world on monoxide poisoning.

Q. Now I ask you as a physician or expert who has treated these cases, who was in charge of other cases of carbon monoxide poisoning, and as the physician who was in charge of the instant case, if it is not a fact that long after the carbon monoxide may have been eliminated from the blood through the use of oxygen combined with carbon dioxide the sequelae or ill effects continue?

A. I can't agree with you.

Q. You say it doesn't?

A. I cannot agree with you, sir.

Q. Isn't it a fact that there is a definite damage done to the brain and its coverings, as well as to the
406 nervous system, including the spinal cord, which injury is there after the carbon monoxide has been eliminated from the blood?

A. The amount of poisoning that it would take to produce those symptoms would be deadly. That is my conception of it. It is a very rapid working thing.

Mr. Mershon:

That is all.

By the Court:

Doctor, as I understand it, Mrs. Just was unconscious when she was carried to the hospital?

The Witness:

No, your Honor, not unconscious.

The Court:

She was not?

The Witness:

She was in a semi-conscious condition.

The Court:

What would you say, without committing yourself to any exact time, as to when she completely regained her consciousness?

The Witness:

When?

The Court:

Yes.

The Witness:

Your Honor, I feel that she regained her consciousness completely, completely regained it, one and one-half hours after she was in the hospital.

The Court:

Now having regained her consciousness at that time, as I understand your testimony, you had doubts as to whether she was shamming in regard to her loss of memory or inability to talk or remember what happened on the boat?

The Witness:

Yes.

The Court:

Now is this a fact; if she were not pretending was her condition consistent with the results of alcoholism and also consistent with having been a sufferer from this gas?

407 The Witness:

Your Honor, her symptoms, the outcome of the whole general picture, is that of alcoholism, and that's all.

The Court:

You have not quite got my question. You say there was doubt in your mind as to whether she was pretending?

The Witness:

Yes, sir.

The Court:

Just assume she was not pretending.

The Witness:

All right.

The Court:

What was the condition you found her in there at the hospital after she regained her consciousness, assuming that she was not pretending? Was that condition consistent with the after affects of alcoholism?

The Witness:

Yes, sir.

The Court:

Was it consistent with her having been overcome with carbon monoxide gas?

The Witness:

It may or might not have been, sir. The variation there being, sir, is that in your carbon monoxide cases they are not completely out; the first thing that happens is that they faint and then they are out. With alcoholism you are able to arouse them up.

The Court:

Let's get down to a period of time, say just a day before she left the hospital.

The Witness:

° All right.

The Court:

Do I understand from your testimony that she was still at that time pretending, according to your opinion, to be suffering from an inability to express her thoughts?

The Witness:

No, she wasn't at that time.

The Court:

She was not at that time?

408 The Witness:

No, sir.

The Court:

Well, did she at that time freely discuss with you what had occurred on the boat or did she refuse to discuss it?

The Witness:

She didn't discuss it at all.

The Court:

Did you seek to talk with her about that?

The Witness:

I did at various intervals.

The Court:

And did she refuse?

The Witness:

No.



The Court:

Did she then have ability to express herself?

The Witness:

Yes.

The Court:

And she refused to do so?

The Witness:

Yes.

The Court:

Did she refuse to point-blank or did she refuse to discuss it or did she say she didn't remember?

The Witness:

She said she just didn't remember, your Honor.

The Court:

That is all I care to ask.

(By Mr. Mershon):

Q. This chart says, Dr. Howell, on March 4th, under your initials, which was the second day she was in the hospital, "Patient feels very good. Talks freely, however is apparently mentally cloudy yet".

A. Mr. Mershon, like I told you previously, I referred to that very hastily; I am sorry that thing was written as it was. I referred to the fact that she wouldn't talk as of the day before. I marked it as "cloudy", because of that.

Q. It is true in carbon monoxide cases that after a period of unconsciousness in many cases the patient has what you call a clear period, after which there is an affect of the so-called sequelae, or symptoms showing injury to the brain and nervous system?

A. That is not the way I understand it.

Q. Do you say that is not recognized as correct?

A. That is not the way I understand the pathology of it. I may be in error about that, however.

Mr. Mershon:

That is all.

410 Thereupon: CARL BLOUNT was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Parmer:

Q. What is your name?

A. Carl Blount.

Q. Mr. Blount, how old are you?

A. I am 46 years old.

Q. Have you ever been on the witness' stand before?

A. I don't believe that I have.

Q. I don't think so either, because you want to get up every time we ask you a question. Tell me, Mr. Blount, were you engineer on this Friendship II?

A. Yes, sir.

Q. For Mr. Yeiser?

A. Yes, sir.

Q. How long before this party went out where these two girls got sick had you been engineer on that boat?

A. Well from the time that Mr. Yeister purchased it, and that was, I believe, in May, 1933; I may be a little wrong on that date.

Q. Well, now do you remember the occasion when the boat came back to Miami after finishing this trip where the girls were on and something was said about carbon monoxide gas?

411 A. Yes.

Q. Now at any time following that were you present when an inspection was made of the exhaust pipe?

A. Yes, sir.

Q. Well, now I want you to come over here to these exhaust pipes that are over here by the side of the room and testify there what you found on your inspection that you made and point out on the pipes what you found at the time.

A. After that?

Q. Yes, at the time you made the inspection. I might ask you first who was present at the time you made the inspection?

A. Mr. Don Roderick and there may have been some more of the crew around the boat, but we were the only active ones that were making the tests.

Q. Do you know how long after you came in that this inspection was made, that is, the date; was it the next day or the day after that or when?

A. It wasn't that day; it was the next day.

Q. Will you come over here, Mr. Blount?

A. (Witness leaves witness stand and goes over to the exhaust pipes.)

Q. Now, Mr. Blount, you are not aware of the way these pipes have been laid out here?

A. Yes, sir.

Q. Have they been laid out by somebody else?

A. Yes.

Q. Do you recognize that (pointing) as being the port exhaust pipe on the Friendship II?

412 A. Yes, sir.

Q. It looks like it?

A. It looks like it, yes.

Q. So you will not be confused, you see this part down here, Exhibit 1, is that known as the exhaust manifold?

A. No, sir.

Q. What do you call that?

A. That is the exhaust pipe.

Q. At what portion of the ship is that?

A. That joins on to the manifold.

Q. Where is it?

A. Right next to the motor.

Q. Is it in the engine room or not?

A. Yes.

Q. In the engine room?

A. Yes.

Q. This one is on the starboard side, you say?

A. Yes.

Q. The rest of it, as you have stated, is the port exhaust?

A. Yes.

Q. At the time that you made your inspection of the exhaust pipes, will you please tell us what you did?

A. Well, we had to roll up the rug on the boat, a fairly big rug, and we took all of the boards out of the ship, and down in the hallway of the ship we took all of these hatches out and we went in and we started the motor; in fact, we started both motors. We started this one
413 - and we located a hole in it right away.

Q. How did you locate the hole?

A. From the water coming out of it.

Q. Whereabouts with relation to the rooms on the ship did you locate that hole?

A. Well, it was in the port, I reckon you would say. There was a room that went almost across the boat, and there was a small stateroom between that and the dining room and this was up in that way.

Q. Under the port bedroom, you would call it?

A. Yes, port stateroom.

Q. If you assume that this represents the end of the pipe in the engine room, will you follow the pipe along and show us just about where that hole was from which water was coming at the time on the exhaust pipe?

A. This hole right here (indicating).

Q. Well, it is on Exhibit 6 at the after-end?

A. Yes.

Mr. Mershon:

About four and one-half feet from the after-end?

Mr. Parmer:

Yes.

(By Mr. Parmer):

Q. After you discovered this leak did you make any effort to see the hole?

A. Yes.

Q. What did you do?

414 A. We got a flashlight and we took the light and just shined it down here and we looked as good as we could that way, and that is the way we located and saw what it was as near as it could be seen.

Q. Do you have a hatchway there?

A. Yes, right over it.

Q. How far below the floorboards was this pipe?

A. Probably eight inches; I would say eight or nine inches below the floor.

Q. You were standing on the deck?

A. Yes.

A. Yes.

Q. And this was below the deck on which you were standing?

Q. It was about eight inches below?

A. It was about eight inches.

Q. Where was the hole with respect to the pipe; was it on top of the pipe, below it or on the side?

A. It was on the lower side.

Q. Lower side?

A. Yes, sir.

Q. Well now I want to know whether you took the trouble to actually see the hole or not and if you did what did you do in order to see it?

A. Well, I had to get down, get my head down there; from the center of the boat we could see it fairly well; by shining the light on it you could see the hole
415 fairly good.

Q. Did you get closer to it than the center of the boat?

A. We had our hand on it; we could feel the water coming out of it there.

Q. Did you see at any time the nature of the hole from which the water was coming?

A. Yes, sir.

Q. Will you describe the character of the hole at that time?

A. Well, it looked to me like there was a plug in it, and this plug was leaking; it was a little oblong hole; it wasn't very large. The hole wasn't very large. We judged that we couldn't hardly put a lead pencil in the hole; it was very small.

Q. What I want to know was any part of the plug in it at that time?

A. Apparently, yes.

Q. What makes you say "apparently, yes". I want to know what you saw there that makes you say that apparently some of the plug was there?

A. Well, merely the color of the pipe and everything was a little different in that particular spot there. I believe I can show you in another place there, for example, of how it would look different on the same pipe.

Q. Go ahead and show us what you mean.

A. I notice this hole (indicating); this hole wasn't in the pipe at the time; this hole here wasn't in the pipe when we examined it.

Q. You mean to say it wasn't opened?

A. No, this here (indicating) was not opened.

416 Q. All right.

A. Now right here, if you will come right here to the side (pointing); there is the point it was; there is

where it looked like a little seepage of water; not very much, but just dripping, but that was wet in a circle right around that thing (indicating).

Q. Just to make it clear, you are talking now about this hole on Exhibit 6 which is at the forward-end?

A. Yes, sir, and it was under the dining-room.

Q. It was under the dining-room?

A. Yes.

Q. Are you telling us that at the time you made this inspection that there was still a plug at this place where now appears a hole?

A. Well, it looked like this, and there is a plug which worked off of there. If you will make an examination you will see the front side and the—

Q. There was a leak at this place where now appears the hole?

A. No, it was up here around this where it looked like it has been plugged up.

Q. Now at the time that you saw it there did you see something that appeared to be a plug?

A. That which I pointed out.

Q. Do you know whether this was a plug or not?

A. No, sir.

Q. At the time that you and Roderick were
417 there was there something that appeared to be a plug?

A. Well, when we patched that hole there we remarked that it looked like a plug in there, and it was kind of wet around it, and we wanted to get the boat back to the home port, and in putting these patches on we went ahead and patched that hole right there then.

Q. You didn't do the work yourself?

A. No, sir, but I was there, and he had the light on it and looked all along, and went along with hammers. Of course it had a lot of this asbestos back of it, but we just tapped on it to see the sound of it.

Q. This place which was at the forward-end of this Exhibit No. 6 you say that had a leak around the plug?

A. Yes, sir, just a very small leak, kind of like water, just foaming out; it was just a little foamy substance there; it wasn't very much; it was wet around this circle here (indicating).

Q. At the time it looked like a circle?

A. Yes, I believe right here you can tap that right there now and I believe you will find something of that nature there now, and this hole (indicating) was not in the pipe at the time.

Q. You did not see any hole there?

A. No, sir.

Q. What I want to know is with regard to this place that you did see a hole. What was the appearance of the metal or whatever it was around it?

A. Well, it was more or less brown.

418

Q. Brown?

A. Yes; it looked like it might be brass or copper, something like that.

Q. I call your attention to this hole at the after-end of Exhibit 6. When you saw the hole at the time that you made the inspection was the hole as big as it is now?

A. No, sir.

Q. Was the hole that you saw of the character and shape of the one that you see there now?

A. No, sir.

Q. Will you tell what the difference was between the way the hole was then and the way it is now in shape?

A. The back side of it looked like it was round, just like it is here now (indicating), and looked like a little place; I would say it was about one-third as large as that hole there.

Q. Did you get the idea that there was a part of a plug in the hole?

A. Yes, sir.

Q. And that a part of the plug was worn away?

A. I did. The plug had eaten up—we thought it was—

Mr. Mayne:

I object to that, what they thought it was.

A. What I thought it was.

(By Mr. Parmer):

Q. If you take the way the hole is now and compare it with the way the hole was at the time you inspected it, will you tell us about how much of the hole appeared then as compared to how much appears now, or do you think you could draw it out on a paper better?

A. The front of that hole is round and the
419 other was just like the metal had just fallen off of there. You know that copper and brass when mixed with water, hot salt water, will get mealy and soft, and it gets so soft that you can mash it with your fingers.

Q. I am only interested in determining if I can from your testimony the difference in the size of the hole then as compared to the size of the hole as you see it now.

A. It is hard to divide that up and tell how it was, but this hole (indicating) wasn't all the way around; there was just a little piece like this here (indicating).

Q. Just a piece across?

A. Yes.

Q. I think I had better illustrate it to you on a piece of paper. Will you come here and use this table as a desk and first draw a circle to represent the way the hole is now?

A. Would you make it as near the same size as that hole?

Q. If you can.

A. All right.

Q. Try to make the hole as near the size as it is now.

A. (Indicates on diagram).

Q. You are representing the way it is now?

A. Yes.

Q. You had better mark that "A" to represent the way the hole is now.

420 A. (Witness so indicates).

Q. Now I want you to draw something to show us the way the hole appeared then; do it on the line below.

A. (Witness indicates on diagram).

Q. In other words, it was part of a circle?

A. Yes. It was part of the circle, and this was probably a little bigger than this here (indicating), and it run across that way on the back side toward the stern of the boat.

Q. There was still something else in what is now the circle?

A. Yes.

Q. What was the color of the rest of that part that was in the circle?

A. That was brown and a different color than the other pipe; the other pipe was kind of corroded and greenish color, but this was more like a brownish color. It is hard to describe the color, but it looked like there was a distinction between the two.

Q. You didn't have anything to do with putting either one of these repairs coverings around?

A. No, sir.

Q. You turned that over to Mr. Roderick?

A. Yes, sir.

Mr. Parmer:

Just for the record may we mark "B" to indicate the way the hole was at the time he inspected it?

Mr. Mayne:

According to the statement of the witness.

The Court:

Do you want to offer that in evidence?

421 Mr. Parmer:
Yes, may I offer it in evidence?

Mr. Mershon:
No objection.

The Court:
Let it be filed.

(Thereupon the diagram above referred to was marked PETITIONER'S EXHIBIT No. 1).

Q. Now, Mr. Blount, did you at some later date cooperate with a chemist in making tests on board the ship with regard to carbon monoxide gas which might come from the exhaust pipe?

A. Yes, sir.

Q. And what did you do in connection with those tests?

Mr. Mershon:

If your Honor please, we object to the question as being irrelevant and immaterial; no predicate has been laid; he has not given the name of the chemist; he has not given the time or place; he has not given it with reference to the hole in this pipe or with reference to the hole that the witness says that he first found in the pipe, and it has not been shown that the conditions under which the tests were made were anything similar to the conditions existing aboard the yacht on the date of the accident or the date when the witness made the examination of the pipes and discovered the hole.

Mr. Parmer:

That is what I am attempting to do now, to lay the foundation. The other man made the tests. This man merely cooperated.

422 The Court:

I agree with Mr. Mershon that the predicate has not been laid for the tests being testified to. But you will proceed with your examination along the lines of laying the predicate.

Mr. Parmer:

That is correct, your Honor. I am asking him first what he did.

The Court:

All right.

(By Mr. Parmer):

Q. Do you remember where the boat was at the time?

A. Yes.

Q. Where was the boat?

A. The boat was in drydock; the boat was laying at mooring at the river's side.

Q. Now on March 2, 1936, when you were returning from down the Bay to Miami with these passengers on board, will you tell us at what speed the engines were running?

A. 550 revolutions per minute.

Q. What speed is that called?

A. The motors will turn around 700, but we usually run them about 750—I mean about 550.

Q. Now during the tests which were made on August 25th did you run the motors?

A. Yes, sir.

Q. And at what speed did you run them?

Mr. Mershon:

If your Honor please, it has not been shown that the conditions under which the tests were made were anything like the conditions of the trip in question. He is talking about tests which were made—

423 Mr. Parmer:

Just a minute; I will outline the nature of the evidence.

The Court:

I will overrule the objection. I do not think we have any testimony offered here as to what was the result of the test. I think the objection should come at that time; we are just developing now as to what was done.

Mr. Mershon:

Then, if your Honor please, before he undertakes to show what was done at the tests, before he gives any testimony of his tests, we would like to have the opportunity of examining him to see the conditions under which they operated coming up the bay.

The Court:

I imagine I will grant you that right.

Mr. Mershon:

When counsel has completed his examination showing the conditions coming up the bay, if there is anything further we would like to develop, we would like to have that opportunity.

Mr. Parmer:

Certainly.

(By Mr. Parmer):

Q. Now at the time you were running the motors in question in connection with the tests, will you tell us at what speed you were running the "motor"?

A. At about the same speed that we usually run.

Mr. Mayne:

What is that?

The Witness:
Around 550.

(By Mr. Parmer):

Q. Now was the propeller moving?

A. Yes, sir.

Q. At the time that you were coming up from
424 down the bay into Miami?

A. Yes.

Q. Now at the time that you made these tests was the propeller moving?

A. Yes.

Q. Now at the time that you were coming from down the bay to Miami, of course, you were moving through the water?

A. Yes.

Q. But when these tests were made were you moving through the water?

A. We were tied up to the dock.

Q. In that respect there is a difference?

A. Yes.

Q. Now what did you do with respect to the covering which was on this hole, which was the after-hole on Exhibit No. 6?

Mr. Mershon:
When?

Mr. Parmer:
At the time of the tests.

A. We unloosened the clamps and slipped the patch right up the pipe.

Q. Did you expose the hole?

A. Yes.

Q. What did you do first with regard to this hole; what did you do?

A. What did I do?

Q. Yes.

425

A. I held a hose on it for the chemist.

Q. How close to the hole did you hold the hose?

A. Right up against it.

Q. Was any hot water coming out?

A. Yes, sir.

Q. What did you do to keep your hands from being burned?

A. I picked up some rags and wrapped around the end of the hose and put the hose right up against that, and then the water would come out.

Q. How long did you continue doing that?

A. It seemed like ten minutes, but I don't guess it was over four or five.

Q. Did you continually hold it there until the chemist told you to stop?

A. Yes.

Q. Now you got through with that. What did you do with respect to this hole?

A. We pulled the hose back on it; covered it up and put it back.

Q. At any time did you expose the hole and run the engine for a long period of time?

A. Yes.

Q. You did?

A. Yes, sir.

Q. Now did that come before you had this operation of holding the hose or afterward?

A. We removed the hose first and run the
426 motors for about two hours.

Q. Two hours?

A. Yes, I suppose something like that. According to our log book we ran it as long as it took us to run that morning coming in on March 2, about two hours and twenty minutes.

Q. Who was doing the timing, you or the chemist?

A. The chemist.

Q. He was doing the timing?

A. Yes, sir.

Q. So the first thing you did was to run them along for two hours and twenty minutes?

A. Yes.

Q. Was it after you had completed that that you did this other job of putting the hose on it?

A. Yes; it was after we run it that long, yes.

Q. When you made the tests how was the hole inside with respect to the size of the hole at the time you had inspected it, at the time that Mr. Roderick was on board the ship?

A. Apparently larger.

Q. How was it at that time with respect to the way it is now?

A. It didn't seem as round as it is right there now. We only had a small hose there, and I know that the small hose wouldn't go into the pipe at all; we had to hold it against it to get it fixed.

Q. At the time you made the tests was the hole as large or smaller than it is now in that pipe?

427 A. Apparently smaller.

Q. Was it round at that time or oblong?

A. It was more round than it was the first time, than it was before.

Q. After you had run these motors for two hours and twenty minutes with this covering of, did you go up to the aft-stateroom?

A. Yes.

Q. Was the chemist with you?

A. Yes, sir.

Q. Was Mr. Coleman along too; do you remember Mr. Coleman here?

A. Yes.

Q. Was he along at the time?

A. Yes.

Q. Now prior to beginning the test had anything been done with regard to the windows and the doors in that aft-stateroom?

A. Yes.

Q. What was done?

A. All had been closed.

Q. Windows and doors?

A. Yes, sir.

Q. You mean at the beginning of the running of the motors with the hose off?

A. Yes, sir.

Mr. Parmer:

Well, I believe it is only fair to you, Mr. Mershon, to let you ask the questions. I have come to the point where I want to show a fact.

428

The Court:

Was that a garden hose or what?

The Witness:

It was a little house hose.

Mr. Parmer:

Who brought the hose?

The Witness:

The chemist.

Mr. Parmer:

We have him here to testify, your Honor.

Cross Examination.

By Mr. Mershon:

Q. Mr. Blount, I believe you said that despite all you could do in wrapping rags around the end of this hose, the hot water leaked out on your hands after all.

A. Well, the rags got wet.

Q. Did the water come out into the rags?

A. It leaked around the hose there; there was no way to get a perfect fit.

Q. You didn't have a perfect fit of the hose against the pipe; in other words, you couldn't get a perfect fit?

A. We got up right against it.

Q. The rag was there to catch the water that ran out on the outside of the hose to keep it from burning your hands?

A. That was what the rag was there for.

Q. And despite the fact you had the rag there water did leak out on the outside of the hose, the water that came out of the exhaust pipe.

A. The rag got wet, yes.

Q. So that all of the contents of that exhaust pipe did not go into the hose but some of same had leaked
429 out on the outside of the hose and into that rag.

A. Practically all of it went in there.

Q. Just answer the question; some of it did not.

A. The rag got wet, yes.

Q. Was that salt water or fresh water you were running through the pipes at that time?

A. Salt water.

Q. Salt water?

A. Yes, sir, but not as salty as it is out in the Gulf.

Q. How far is that from the mouth of the river?

A. I don't know just the distance.

Q. Is there tide water there?

A. Yes.

Q. And the water is blackish but not—

A. Sometimes in rainy seasons it is; sometimes it is a little brackish.

Q. At the time you made the tests you say the hole that is in this pipe now, four and one-half feet from the after-end of it, wasn't as big as it is now; did you say that?

A. Yes. To the best of my ability I would say it is bigger.

Q. When you made the tests you didn't see the hole from the top looking down on it?

A. No, sir.

Q. The hole was in the bottom of the pipe?

A. No, sir.

Q. Where was it?

430 A. On the side.

Q. You mean this hole was on the side?

A. Not right in the bottom; no, sir.

Q. Tell us about where it is now.

A. In that respect it would be about there (indicating).

Q. Indicating the—

A. The angle of that being the lower side down.

Q. That would be about five o'clock on the face of a clock, is that about right?

A. I would say 25 to 30 degrees.

Q. Was that hole facing toward the middle of the boat?

A. Yes.

Q. And where were you standing when you were holding that hose?

A. I was standing right over the pipe.

Q. You were standing and your feet were above the pipes?

A. Yes.

Q. And you were holding the hose up against the pipe?

A. Yes, sir.

Q. You didn't get as good a fit on the hole in the pipe as you got here tonight?

A. No, sir.

Q. Don't you think you are mistaken when you say this hole is bigger now than it was then?

A. No, sir.

Q. Yet you didn't get a good fit in order to make the test?

431 A. You could see that hole from the center of the boat by getting down in there if you wanted to crawl in there and look at it.

Q. You did that?

A. Yes. In my case I was very anxious to see what it was.

Q. When you made the test you did that very thing; you got right down on the bottom of the boat?

A. Got right down over it and looked at it.

Q. You didn't get your eyes on a level with the hole at any time?

A. You mean looked right straight at it?

Q. Yes.

A. No, sir.

Q. Like you are looking out straight now?

A. No, sir.

Q. Until today did you ever see that hole clear like you are seeing it right now?

A. No, sir.

Q. What kind of a hose was this you say you brought over there; was it a rubber hose?

A. Yes, sir.

Q. Was it a ship's hose?

A. No, sir.

Q. What inside diameter did that hose have?

A. I couldn't say.

Q. You don't know?

A. I don't know.

432 Q. You said something now about your other tests where you run the motors for two hours and twenty minutes, and you further said that was the time it took you, according to the ship's log, to run

from where you started the motors in Biscayne Bay on March 2 until you got somewhere. Now, does the ship's log show how long it took from the time you started the motors in Biscayne Bay until these ladies were discovered in their staterooms and brought out on deck?

A. No.

Q. Then you are mistaken when you said you run them for the length of time the ship's log showed you operated on Biscayne Bay on March 2nd?

Mr. Parmer:

That is not what he said.

The Court:

He referred to the log-book to indicate the time it started until they anchored in the Bay. Now you asked him did the log show the time when the boat started until the ladies came out on the deck in that condition.

Mr. Mershon:

I will withdraw that question.

(By Mr. Mershon):

Q. Would the log of the Friendship II as of March 2nd show the time that morning when the motors were started up and the vessel headed toward Miami?

A. Yes.

Q. Will the log show when the boat docked in Miami on March 2nd?

A. No.

Q. Do you know when those entries were made in the log?

A. No, sir.

Q. On this morning of March 2nd when you were coming up the bay was the Friendship II towing any other fishing craft?

A. I don't think so.

Q. Had they used any other boat, fishing craft or otherwise, to fish in down there on that week-end?

A. Yes, sir.

Q. Where were they?

A. I believe the sailor was running it, or the mate.

Q. The mate wasn't on board the Friendship II when you came up the Bay on the morning of March 2nd, was he?

A. I don't know whether we were towing these boats or whether they were running them; we never made any log of that.

Q. You don't have any recollection of that?

A. No, sir.

Q. You don't have any recollection of that?

A. No, sir.

Q. The mate couldn't run both of them; if you were not towing them, it would take two men to run them?

A. Yes.

Q. The mate would run one and you might tow the other?

A. If that was the case. In rough weather we usually—

Q. By the way, was it slightly rough on this morning of March 1-2nd, 1936, down there?

A. Yes, sir.

Q. So the natural presumption is that you were running these other two boats back to Miami and not towing them behind the Friendship II?

434 Mr. Farmer:

I object to that, to the expression "natural presumption"; I don't think that is relevant.

The Court:

He is trying to find out what this witness knows. The objection is overruled.

Q. Would that be your belief now, that you were not towing these other two boats on the morning of March 2nd?

A. I don't remember exactly whether we were or not; I don't know, to answer you truthfully.

Q. How far south of the Royal Palm Docks was the Friendship II anchored on the early morning of March 2, 1936 when you started back to Miami?

A. I can give you the location of where we anchored, but I couldn't just say in miles.

Q. Then give the location.

A. The location was right at Featherbed Shoals.

Q. What relation was that to Pumpkin Key; how far was that from Pumpkin Key?

A. Well, it is a little more than half way from Royal Palm Dock to Featherbed Shoals as it is from Featherbed Shoals on to Pumpkin Key.

Q. Had you been anchored over the whole week-end over at Featherbed Shoals?

A. No, sir.

Q. Had you been as far south as Pumpkin Key?

A. We were right around it, not right at it, but we were right around it. We angel-fished there and
435 anchored up in the bay.

Q. When did you come back to Featherbed Shoals?

A. We came back on Sunday evening.

Q. Did you run steam Sunday evening from Angelfish Creek until you came to the Featherbed Shoals?

A. Yes.

Q. What time did you stop in Angelfish Creek going to Featherbed Shoals?

A. Started at 7:30.

Q. What time did you get into Featherbed Shoals and anchor?

A. About 9:10 that evening.

Q. You were running about one hour and forty minutes?

A. One hour and forty minutes, maybe a little more or less.

Q. Or maybe a little more?

A. Maybe a little more or less.

Mr. Parmer:

May I request Mr. Mershon to confine his questions to the subject of whether a proper foundation has been laid.

Mr. Mershon:

My dear sir, I am laying your foundation now, I hope.

Mr. Parmer:

I have a chemist I would like to get off on the 10:00 o'clock train.

Mr. Mershon:

We are laying the foundation now for you.

(By Mr. Mershon):

Q. What time did you cut off the motors of the Friendship II when you arrived at Featherbed Shoals?

A. Whatever the time was put down when the motors were stopped.

436 Q. And that was Sunday night?

A. Yes.

Q. What time did you leave there Monday morning starting back to Miami?

A. 6:50.

Q. What time did you get back to Miami?

A. I think it was 9:10; we were two hours and twenty minutes; two hours and twenty minutes; two hours and twenty minutes from 6:50 would be that.

Q. Didn't you get into the dock about 8:00 o'clock?

A. No, sir.

Q. Do you recall when they found the young ladies in their bunks unconscious?

A. I recall the day.

Q. Do you remember the time of the morning?

A. No, sir.

Q. Do you remember how long it was before you got into Miami?

A. No, sir.

Q. Now it was kind of cold down there, wasn't it?

A. Pretty chilly, yes, sir.

Q. Does the Friendship II have ports opening over the bilges from the outside or windows from the outside—

A. You mean below the windows?

Q. Yes.

A. No, sir.

Q. There is no port hole forward or aft that opened directly into the bilge except the windows in the
437 cabins, is that right?

A. Ask that question again.

Q. I just want to know if there were any ports or vents opening into the bilge of the boat, except the windows or doors that are in the cabin.

Mr. Parmer:

That question is confusing because the ports and doors of the cabin do not enter into the bilge. The question is improperly asked.

(By Mr. Mershon):

Q. Just forget about windows and doors in the cabins. Tell us if there are any ports or vents opening in the bilge of the boat from the outside.

A. No, sir.

Q. How do you get ventilation into the bilge of the boat from the outside?

A. Well, you open the windows and you get air all through the boat; there is nothing that comes in from the

outside except through the windows and doors and things like that.

Q. Do you have any funnels that would take in cold air and put it down in the bilge?

A. There is only one in the engine room; and I consider it draws more than it puts in when it is hot and warm weather.

Q. You do have a funnel opening into the engine room, directly into the bilge?

A. No.

Q. There is a funnel that goes out to the open air which connects with the engine room, through which air can come into the engine room, is that right?

438 A. Yes.

Q. Is there an opening around the propeller shaft where it goes through the after-bulkhead in the engine room connecting with the bilge from the engine room; is there an opening from the engine room into the bilge?

A. The engine room has a bilge, sir; it is more or less placed around the motors; it goes from there—

Q. I am asking you about whether there is an opening through that bulkhead from the engine room into the bilge?

A. The opening that these pipes went through.

Q. So that air coming into the funnel would come in the engine room and blow back through the after-bulkhead in the engine room into the after-bilge?

A. No, sir. The funnel we had was to take out hot air instead of bringing air in.

Q. If you were anchored and it was a fool night, is there anything in the world to prevent the air from coming in from the funnel above the engine room and going through that bulkhead into the aft-room under this state room?

A. It would have a time getting through that bulkhead.

Q. What was the size of the opening?

A. Just a little larger than this pipe; just as small as possible to allow your pipes and propeller shaft to go through.

Q. Is there an opening around the propeller shaft?

A. Very little.

Q. There was an opening?

439

A. Yes.

Q. You do not mean that it was airtight around the pipes and the propeller shaft—

A. No, it would not be airtight.

Q. Now, Mr. Blount, in making the test you talked about on August 26th, 1936, was any test made at the place indicated by the patch at the forward end of the pipe, Exhibit 6, about two and a half feet from the end?

A. No, sir.

Q. No water or gas was attempted to be taken from that pipe?

A. There wasn't a leak in that end there.

Q. Who made this examination where you and Mr. Roderick found the hole in the pipes, Exhibit 6; did you or Mr. Roderick make that?

A. Well, we both made it.

Q. Did you say that you did not find a place that was dripping a few drops of water about two and a half feet from the front end of that pipe, Exhibit 6?

A. We found that it was wet around that plug there, but we never found any hole like that in it at all.

Q. Did you find a drip?

A. Yes, I guess it would drip; it was more of a foam.

Q. It was foamy?

A. Yes, foamy.

Q. Would you say that would drip probably a bucket full in 24 hours?

A. If you had small enough bucket it might drip it full.

440

Q. I will let you set the maximum size bucket it would fill in 24 hours.

A. To be frank with you, I don't think it would fill an ordinary teacup full in 24 hours.

Q. Now what was the occasion of Mr. Roderick coming aboard to make that examination; did you get him?

A. Yes, I got him.

Mr. Parmer:

May I submit at this time that I believe this is going beyond the limit given Mr. Mershon to test the foundation that I have attempted to lay. I am perfectly willing to give him a chance on these subjects later.

Mr. Mershon:

I am just checking the conditions that he found.

Mr. Parmer:

Now he is getting to Mr. Roderick—

The Court:

I think, Mr. Mershon, that you have already gone far enough into that. Now, the last thing you were on was this plug up here on the forward-end of Exhibit 6.

Mr. Mershon:

We will leave him there. He said that he did not take that into consideration in connection with the tests. We have other uncontradicted testimony as to the nature of that hole.

The Court:

All right; do you wish to cross examine further on the matter of qualifications, as to similarity of conditions—

Mr. Parmer:

I do not at this time.

441 The Court:
I was asking Mr. Mershon.

Mr. Mershon:

No, your Honor. I think I have laid the rule which he must come up to.

Mr. Parmer:

I wish to call the chemist now.

Mr. Mershon:

Unless counsel has other evidence to offer respecting the conditions under which he made this test, we should like to state our objections in the record to any testimony concerning the test of Mr. Blount.

Mr. Parmer:

All right.

Mr. Mershon:

We object to the offer of any testimony concerning any alleged test on August 25, 1936, as testified to by the witness Blount, because it has not been shown that the tests were made under the conditions the motors were operated on the night of March 1st and the morning of March 2nd. The witness Blount testified that the vessel, Friendship II, had been operated under power for a period of over one hour, to-wit, one hour and forty minutes on the evening of March 1st, beginning about 7:30 P. M., in a temperature which was cool and in water which was rough; that she laid at anchor and about nine hours later, without any evidence that the gases which had escaped from that hole in the pipe into the bilge had been exhausted or cleared out. The Friendship II was operated for approximately two hours or more coming into Miami in water which was rough and in cooler weather, whereas the purported test consists only of operating the motors, with propellor

442 turning, while the boat was tied up at Fort Meyers for a period of about two hours and a half, without showing any prior operation and storing up in the bilge of gases under the staterooms; second, the tests which Mr. Blount refers to did not take into consideration any leakage whatsoever from the port pipe, Claimants' Exhibit 6, about 21½ feet from the front end thereof, whereas the uncontradicted testimony by Mr. Roderick is that there was a decided leakage from that hole, and Mr. Blount himself admits that there was a seepage of a foamy substance there; third, that in operating the Friendship II it has been suggested that there were two boats which may or may not have been towed behind the Friendship II when she was coming to Miami on the night of March 1st and the morning of March 2, 1936, as to which there is no definite testimony before the Court, while it definitely appears that the test of August 25, 1936 was made without boats in tow. It has not been shown that the conditions at the time of the purported test were the same conditions or identical with the conditions under which the Friendship was operated on the night of March 1st and the morning of March 2nd, 1936. The witness Blount has merely testified that he ran the motors at about the same speed on August 25, 1936 at which he operated them in Biscayne Bay on March 1st and March 2nd, 1936, and he has not testified the speed at which he operated them in either case, nor has he testified positively that they were being operated at the same
443 speed.

It has not been shown that there are any ports or vents, other than the windows, in the cabins or superstructure of the Friendship II.

It has been further shown by the witness Blount that the ventilation into the bilge of the Friendship II comes through the windows and the doors of the cabins, which themselves vent into the bilge, and it has not been shown by any evidence that the windows were open or closed

on August 25, 1936 as they were on the night of March 1st and the early morning of March 2nd, 1936, whereas the Court will take judicial notice of the fact that in March, 1936, when it is cold and rough on Biscayne Bay, the windows would naturally be in a different situation than they would naturally be on August 25, 1936, in the absence of any testimony upon the point.

So we say, if your Honor please, that it has not been demonstrated that the same conditions existed or that the motors of the Friendship II were operated under the same conditions on August 25, 1936 as on March 1st and March 2nd, 1936.

Now, as a predicate to that motion, we move to strike from the record the testimony of the witness Blount.

The Court:

Your motion to stike the testimony will be denied. Outside of that your objections are largely advisory as to what will be relied upon when the proper testimony is
444 made. Some of these grounds are conditioned upon what will be developed in the testimony of the chemist as to what was done with the escaped gas. Right now I do not know, but the tests are not the same in the sense that whatever gases escaped through that hole were allowed to go through the bilge and seep through the vents into the staterooms or other parts of the boat. There is testimony or has been testimony here indicating that a hose was used, however, I must first hear the testimony of this chemist.

I will take your objections into consideration as advisory objctions, but so far there is nothing to rule on. I am not going to strike the testimony of the witness.

Mr. Mershon:

Then we will let it stay in the record.

The Court:

If you offer them as objections, I will overrule them, and I will say that I do not think there is anything before us to which they are applicable. Suppose you enter them in an advisory nature.

Mr. Mershon:

Very well.

The Court:

So far as your specific motion to strike the testimony of the witness is concerned, I will overrule that.

Mr. Mershon:

We may have been premature in our motion.

The Court:

All right, we will proceed with the chemist.

445 Thereupon: SETH STETSON WALKER was called as a witness on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parner:

Q. What is your full name?

A. Seth Stetson Walker.

Q. Where do you live?

A. In Tampa.

Q. What is your business?

A. Commercial chemist.

Q. Now did you on August 26, 1936 go on board the yacht Friendship II?

A. 1936.

Q. 1936?

A. Yes, sir.

Q. Where was the boat at that time?

A. In the river at Fort Myers.

Q. For what purpose did you go on board the vessel?

A. To make some tests of the carbon monoxide gas escaping from the exhaust pipe on the yacht.

Q. Will you describe the nature of the tests that you made?

A. The first thing we did was to measure the rate of flow of the gas that was escaping from the hole in the exhaust pipe, and we then—

446 Q. Before we go to what you did next, will you tell us what you did in order to determine the rate of flow of carbon monoxide gas from the hole, and may I ask you to specify if you can which hole it was that you looked at?

A. Is this the port pipe?

Q. The pipe at which you are looking is a part of the starboard pipe, and this is the rest of it. If you will take this end and fix it on here (indicating) you get the entire port pipe.

A. This is the bow here (pointing)?

Q. This is the bow here and this leads from the bow of the boat back, and this piece (pointing) is hooked on here, so that the extreme end of that goes out the stern of the boat.

A. I don't know as I could actually identify the hole without the approximate position—

Q. Do you remember which hole it was?

A. The hole was somewhat similar to that; it was down under the floor of the bilge, but it was on the inside. Has this pipe been turned over; is that in the same position?

Q. No.

A. I would say it was right in that position.

Q. What did you do with regard to that test?

A. You mean the test measuring the flow of gas?

Q. Yes.

A. We took a five-gallon bottle and filled it full of water; then we had Chief Blount hold one end of a hose, a laboratory hose, over the hole while I manipulated the upper end to connect with the gas that flows from
447 that hose into the mouth of the bottle, so that the gas arose and filled the receptacle.

Q. How long did it take you?

A. It took four minutes to fill the five-gallon bottle.

Q. How close were you to Blount when this was going on?

A. We had the bottle located just about in this position, while he was down on his hands and knees holding that hose.

Q. Were you able to see whether he was holding it close at the time?

A. I wouldn't testify to that; I had enough with my end of the job; I don't know exactly what he did with his.

Q. Did you arrange for the speed of the motors at that time?

A. Yes; I should have stated that at the beginnig. The Chief started the motors and regulated them to what he called cruising speed. We let them run—I don't know how long—but I assume it was the proper time for them to become running smoothly, so that they would be in normal cruising speed, and then he timed it from that on to get our two-hour period.

Q. We are not concerned with your two-hour period yet. We want to get the bottle experiment through first.

A. The reason I said that was because the bottle experiment came, and then we occupied ourselves together on the rate of flow; in other words, these two tests ran simultaneously.

Q. Was that during the four minutes you took gas from this pipe into the bottle?

A. Yes, sir; it took four minutes to fill the
448 bottle; it just happened to take that long to collect five gallons of gas.

Q. Did you take that gas which you had in the bottle and analyze it?

A. Yes, I did.

Q. And what was the proportion of carbon monoxide gas that you found in it?

A. 12.8 per cent. carbon monoxide gas.

Q. That is of the total content?

A. Yes, sir.

Q. It was 12.8 per cent.?

A. That is right.

Mr. Mayne:

12.8 per cent. of the five gallons?

The Witness:

Of gas, whether five gallons or a hundred gallons; that is the percentage figure.

Q. Are you familiar with the internal combustion engines to the extent of being able to tell us whether a motor which is running with a load runs more efficiently or less than one that is running without a load?

A. I cannot testify to that from my own knowledge, but I know the accepted textbook treatment of it, namely, that an automobile standing at the curb idling without a load will draw many times as much carbon monoxide gas as one that is on the road running.

Mr. Mehrtens:

If your Honor please, I move to strike that statement of the witness as to the possible, accepted view and the contents of textbooks on the ground that it is mere hearsay evidence.

449 (By Mr. Parmer):

Q. When you say it is not within your personal experience do you mean to say that you have not con-

ducted tests on automobiles and internal combustion engines to determine that fact?

A. No.

Q. But is it a part of your business as a chemist to know that fact from reading?

A. It is.

Q. Tell me, Mr. Walker, do you in the course of your business as a chemist confine your knowledge solely to those things upon which you have conducted experiments?

A. No.

Q. There are many things in your business as a chemist that you know through having studied?

A. Yes.

Q. And is this fact with regard to internal combustion engines one of those things?

A. Yes.

Mr. Mehrtens:

Do you know of your own personal knowledge that a motor idling will produce more carbon monoxide than a motor operating on the road?

The Witness:

No, sir.

Mr. Mehrtens:

Are you an expert on mechanical engines ?

The Witness:

No, sir.

Mr. Mehrtens:

We renew our motion to strike the testimony on the ground that it is hearsay, also on the ground that the witness is not competent to express an opinion of that nature, nor is he qualified.

The Witness:

May I inject a word? I have read many articles by authorities to that effect.

Mr. Parmer:

I do not submit that according to this expert's testimony it is a part of his business as an expert to know these things of which he is testifying and that it is not necessary for him to conduct personal experiments to find out in order to make himself an expert.

The Court:

He has qualified as an expert chemist.

Mr. Mehrtens:

Yes, but that is an incidental matter relating to his profession.

The Court:

And he says that he utilizes certain specific information that he gets from authorities in connection with his work, and while he is not an expert on that issue, automobile mechanics, I think he is qualified to tell us what is the accepted theory, as the experts in that line state, so I think it is competent for him to state that. I overrule the objection and deny the motion to strike.

(By Mr. Parmer):

Q. I want you to refresh your recollection a bit with respect to the order in which these tests were made. I think you told me that you made these tests with regard to the bottle in order to determine the rate of flow and the content while this two-hour test was going on. Are you sure of that?

451

A. Since you raise the question it is possible that I don't remember that correctly; and that thought came to me while ago, but that is the way I had

it in mind, but since you raise the question I would not be able to say positively.

Q. Was Mr. Coleman present during the test?

A. No, sir.

Q. But you did make this one test from which you determined the content of this mixture which issued from the pipe out of this hole?

A. Yes, sir.

Q. That is one of the tests you made?

A. Yes, sir.

Q. Did you make any determination of how many parts in say 10,000ths of air that would have been in the after-stateroom; did you make any determination as to how much carbon monoxide gas could issue from that pipe in the space of two hours?

A. Yes; that was the object of the test; we calculated that.

Q. Then you made a calculation of how many parts of carbon monoxide gas could issue within two hours; did you?

A. Yes, sir.

Q. Will you tell us what you calculated it to be?

A. I expressed that in this way—I don't know if I have the exact figure you refer to—but I figured what would have been the concentration in the after stateroom, assuming that all of the gas escaping from the hole was concentrating and sending all of the gas into the
452 after-stateroom, then what would be the concentration of carbon monoxide gas in that room.

In the first place I took the measurements of the stateroom and from the figure figured its cubic capacity, and used that number of cubic feet in the calculation of that concentration, which figured three-tenths of one per cent.

o. 30 parts in 10,000.

Q. Is that all of it?

A. Yes.

Q. That is over this two-hour period?

The Court:

Do you mean to say that a five-gallon container could be filled in four minutes and that in a period of two hours there would be thirty times five, or 150 gallons of that product, of which 150 gallons 12.8 per cent. would be carbon monoxide gas?

The Witness:

Yes; I believe that is correct.

The Court:

And if you concentrated 12.8 percentage of 150 gallons of gas in that stateroom, the measurements of which you took, that would poison the air to the extent that you just testified?

The Witness:

I am not positive whether I followed you all the way, but let me illustrate how I arrived at that.

The Court:

All right.

The Witness:

The stateroom was 9 by 15 by 6.33, which means that it contained a capacity of 855 cubic feet. The flow of the gas from the hole, as already stated, was five gallons in four minutes, which figures out 020.06 cubic feet
453 in two hours' time; in other words, 20.06 cubic feet of gas. Analysis showed that that gas contained only 12.8 per cent. carbon monoxide gas.

The Court:

That 20.06 is what?

The Witness:

That is the total cubic feet of gas that came out in two hours' time.

The Court:

If you take the content or what you have given as five gallons of gas or at the rate of five gallons every four minutes, the accumulation in a two-hour period would be equivalent to how much cubic footage?

The Witness:

20.06 cubic feet.

The Court:

Of which there would be 12.8 carbon monoxide?

The Witness:

Yes.

The Court:

If you diffused that amount of carbon monoxide in a stateroom of the dimensions which you stated, it would poison the air to what extent?

The Witness:

20.06 cubic feet.

The Court:

All right.

(By Mr. Parmer):

Q. Now did you make any tests to determine how much of the gas, of the carbon monoxide gas, issued from this hole actually would go into the room?

A. Yes, sir.

Q. What test did you make to determine that?

A. Not what would not get in but what would get in.

Q. I mean the after-stateroom.

A. Before the test was started we stretched
454 a rubber hose from the head of the port bed out
through the door, so that we could keep the door
closed except for a small crack, which was necessary
so as not to have to go into the room to get our sample.
When we were all set to get our sample from that particular point, the point that Mr. Coleman considered the most important place to get the sample, being the head of the port bed, then, as I say, we closed the door and ran the engine for two hours, at the end of which time we pumped out the sample of gas through this hose without having to disturb the room, and collected samples of that gas which I took back to the laboratory room for analysis.

Q. After you had taken your gas out and you got your specimen did you open the door?

A. Yes.

Q. What did you observe when you opened the door?

A. The room was full of haze, a hazy blue, so to speak, and there was a strong odor that came out, the typical odor of exhaust gas from a combustion engine.

Q. During the experiment were all of the windows closed in the room?

A. Yes, sir.

Q. Did you examine the sample of gas which you took from the port bed?

A. Yes.

Q. What percentage of carbon monoxide gas
455 did you find in that sample?

A. 7.8 parts per 10,000.

Q. Roughly 8 parts in 10,000?

A. Slightly less than 8 parts in 10,000.

The Court:

Did you make any calculation as to what percentage of the total gas that was coming through the pipe that came through this test hose?

The Witness:

You mean what percentage of the total escaped up in the room at that time?

The Court:

No; going back to your first test; your rubber hose test; did you make any figures or tests to determine how much of the total exhaust that was going through the pipe when the engines were running at the rate of speed that they were running that went through your hose into this bottle?

The Witness:

No, we didn't have any way to do that; we didn't know what the total exhaust gases might be.

The Court:

What assurance did you have that there was going into your pipe all of the gas that did escape through that hole?

The Witness:

Chief Blount will have to answer that; he was the man who held the hose on the pipe, and he was instructed to—

The Court:

Did any water come up through your rubber hose?

456 The Witness:

I don't know, because there was water already in the bottle; I doubt very much whether there was enough pressure to force water through the hose; naturally the gas would rise; I imagine that the water would pass on down the exhaust pipe.

The Court:

With a hole in the pipe like this, what amount of pressure would there have to be on the water going through to cause the water to escape upwards through this horizontal line, going up horizontally and escaping back through the pipe?

The Witness:

I do not have any figures to answer that. We were not attempting to measure the water that came out; it was the gas that actually came through that hole that we were after.

The Court:

Would atmospheric conditions have any effect upon the amount of gas which would come through; in other words, would the tendency of the gas to come up through your hose, rather than escape normally through the exhaust pipe, be increased or diminished by reason of any atmospheric condition?

The Witness:

I do not say that there would be no effect of that kind. Of course the greater the barometer pressure the more depressed the gas would be.

The Court:

This case, the actual incident in which we are interested, occurred in March, and your test was made in August. Now, would the difference in summer weather and early spring weather in Florida make any difference?

457 The Witness:

It might conceivably do so; in other words, gases are subject to expansion and contraction with temperature; it is well known that gas will expand; there will probably be some slight variation in that.

(By Mr. Parmer):

Q: Well now would you say that the gases in an exhaust pipe would be subject to that difference in barometer pressure?

A: To some extent, but let me qualify what I said a moment ago about the temperature. After all an exhaust pipe is so hot, so whether it was March or August, I don't believe there would be much difference in regard to temperature. It would heat up to about the same temperature whether it be August or March.

Mr. Mayne:

Would the question of certain classes of gasoline, pure gas or impure gas, create more gas from the motors?

The Witness:

It is possible.

Mr. Mayne:

Did you make any examination to see whether you were burning the same kind of gasoline that they burned in March in these motors?

The Witness:

No, sir.

(By Mr. Parmer):

Q: Now the rate at which you found the gas which issued from this pipe, that is, the percentage that you found of carbon monoxide in it was 12.8 per cent.?

A: Yes.

Q: Now, can you tell us whether that indicates
458 a high content of carbon monoxide gas in exhaust gas or one of normal content for an efficient motor?

A: No, it is quite high.

Q: What is the ordinary percentage of carbon monoxide gas in the normal running motor?

Mr. Mershon:

We object to that, if your Honor please; the term "normal running motor" has no significance here. The witness is not qualified on engineering questions.

(By Mr. Parmer):

Q. Well, is it a matter of chemical engineering with regard to the use of fuels?

A. Yes, sir.

Q. What I want to know is what is the carbon monoxide content of the exhaust gas in a motor which is classified as efficient?

Q. [A.] Well, seven per cent. is the average figure accepted for that; that would indicate a motor of average efficiency, not extraordinarily efficient or inefficient.

Q. And the further you get away from that seven per cent. the further you get away from average efficiency?

A. Yes.

Q. You say that 12.8 per cent. that you had was poor efficiency?

A. Yes.

Q. Would that be caused by the fact that the engine at the time of the test was not dragging a load and not moving the ship?

A. I do not say that definitely, but that most probably had a lot to do with it.

459 The Court:

There is probably some reason why you adopted this particular method of testing. To my mind the natural question arises in connection with the desirability of having the test show how much carbon monoxide gas would escape into this particular room,—why you did not create a situation as similar to one that you were trying to compare as possible, namely, shut all windows in the aft-stateroom, and put the windows in the other rooms in their same condition, if you knew their condition, and

then start your motors and let them run two hours and twenty minutes, and see how much gas got into the room? Why didn't you do that?

The Witness:

We did that; I testified to that.

The Court:

Why did you use a hose or did you use a hose in that test?

The Witness:

For the reasons mentioned, so that we could get a sample from that particular point in the room without having to open the room and let the air out.

The Court:

In this last two-hour test you did not use the hose; you just let the gas escape into the bilge and—

The Witness:

This hose we used to get the sample of air from the room was an entirely different hose from the other. It was a long hose that I had with me for the purpose of reaching from the head of the bed clear out of the door to the hallway, so as to draw a sample of the air without having to open the door.

460 (By Mr. Parmer):

Q. The Court has asked you whether in making this two-hour test you allowed this gas to escape there in the bilge and let the gas go anywhere on the ship?

A. Yes.

The Court:

And this hose test was to extricate gas out of the aft-stateroom to discover its content?

The Witness:

I undoubtedly was mistaken awhile ago when I said that we took this sample while we were running the motors for the two-hour test; we would have too much sense for that; certainly we didn't do that. I never had thought about that.

The Court:

You didn't do what?

Mr. Parmer:

The witness stated first that he conducted this two-hour test in which the gas was allowed to run free into the bilge and escape where it would. Then he said he conducted this other test with the hose and the bottle in order to determine the rate of flow from the pipe, and he said that the hose and bottle test was conducted while the other two-hour test was going on. Now that was his first impression. I asked him if he were sure about it and he hesitated, and now he says that he is sure that he did not do it because that would be silly and would spoil the test.

The Witness:

I am dead sure that that was a mistake.

(By Mr. Parmer):

Q. That is, you completed one test before you made the other?

A. Yes, sir; they were separate.

Q. You say you closed the windows in the after-stateroom?

461

A. Yes.

Q. And these vents which went up in the walls and connected through the walls down in the bilge you did not touch those at all?

A. No, sir.

Q. You left them partly open so that anything in the bilge could come up?

A. Yes.

Q. Windows all closed?

A. Yes.

Q. And the door leading to the after-stateroom was closed with the exception of the place where it jambed up against the hose?

A. Yes, and that was negligible, because it was a soft rubber hose and we shut the door practically tight.

Q. And the gas would go through the hose?

A. By the time we got the sample we had the door shut so as not to pinch the hose.

Q. How did you withdraw the gas through the hose from the place near the bed?

A. By an air pump.

Q. Where did you put the sample that you withdrew?

A. In a clean bottle.

Q. In a clean bottle?

A. Yes.

Q. So that you had a gallon of the atmosphere around that port bed?

A. Yes, sir.

Q. How did you do anything with respect to the windows in the other staterooms like that port stateroom or the starboard stateroom, or do you know what condition they were in?

A. I don't believe I can remember that; as a matter of fact, I left that part of it to Mr. Coleman because he was familiar with it.

Q. You wanted to know how much would come up those ventilating slots on the side?

A. Yes.

Q. And you found that to be about eight parts in 10,000?

A. Yes, sir.

Mr. Parmer:

Your Honor, I do not want to excuse the witness unless you have no other questions for him to explain what he means.

Mr. Mershon:

We certainly have some questions.

Cross Examination.

By Mr. Mershon:

Q. Mr. Walker, how many cubic feet are there in a gallon?

A. I do not remember the table.

Q. You have demonstrated an experiment here from which you have given a deduction. Now let's follow you through and see what we get.

A. All right.

Q. Referring first to the first experiment, where you took the five gallons of air mixture into the
463 bottle from the exhaust pipe in a period of four minutes. That would mean that you would get from that hole under the same conditions 150 gallons in two hours; is that right?

A. Yes.

Q. How many cubic feet are there in 150 gallons?

A. Well, I can only quote the figure that I calculated and put down here, which was 20.6 feet, and I believe you will find that correct if you will figure it out.

Mr. Parmer:

Do you have the tables there?

The Witness:

They may be in my brief case.

Mr. Parmer:

I wish you would get them if you can.

(Thereupon witness leaves the stand and goes to his brief case located on the front bench of the Courtroom and extracts therefrom certain papers.)

The Witness:

I have here a more elaborate calculation from which I made a summary and put in my book. The flow of gas from the hole was five gallons or 1155 cubic inches in four minutes. I had a factor there of cubic feet which was reduced to cubic inches, 231 cubic inches per gallon, and from that I got the 20.06 cubic feet in two hours' time.

Q. Then you took 12.8 per cent. of the 20 and fraction gallons and you found so many gallons of pure carbon monoxide gas?

A. So many cubic feet. This five gallons was used as a matter of convenience.

Q. Just to have a unit?

A. Yes, sir.

Q. Where did you get the measurements of
464 this after-stateroom?

A. From Mr. Coleman.

Q. You did not measure it yourself?

A. No, sir.

Q. What were those measurements given to you as being?

A. 9 by 15 by 6.33.

Q. Were you told that this stateroom was of rectangular or cubicle shape, that is, that the side and the wall and the floor formed at right angles?

A. No, sir; I knew better than that because I saw the stateroom.

Q. Did you make any allowance at all for the fact that there was a dresser in there and reduce the cubic feet?

Did you make any allowance for the cubic feet taken up by the beds and the springs and the mattresses on them?

A. No.

Q. Two beds, springs and mattresses?

A. As a matter of fact I was trying to give a fair figure and allow all the space I could in there instead of making it worse than the other.

Q. How is that?

A. Well, then that would make the concentration still higher.

Q. It would have made it higher?

A. Yes.

Q. That would have been more unfavorable to your client than to ours, would it not have?

A. Maybe, if you look at it that way.

Q. Did you make any allowance for the private bathroom opening out of the stateroom?

A. No, sir. I took these figures as Mr. Coleman gave them to me. I take it that these figures allowed for the curvature of the walls.

Q. You didn't make any allowance there for the two clothes closets that appear here, or at least the walls of them that open into the stateroom?

A. I didn't. I don't know what Mr. Coleman did.

Q. So if you had made allowance for the cubic content of the beds, mattresses, springs, dresser or bureau, it would have decreased your cubicle content of the stateroom, would it not?

A. Yes.

Q. And it would have increased the percentage of saturation in that room if all of the gas that you drew out in the two hours had saturated in the stateroom?

A. Yes.

Q. So your experiment, you must admit, is not a success and is not correct if you are attempting to relate it to a situation where the dresser and the beds were in the stateroom at the time.

A. No, I wouldn't admit that.

Q. Your figure is not correct?

A. There may be some slight error there; after all in my conducted experiment it is not 100 per cent. perfect; it is impossible to do that.

466 Q. Taking your own figures they are not correct according to your own facts as you observed them because the dresser and the beds were in the state-room at the time, is that true?

A. Yes.

Q. And you made no allowance for their presence there?

A. Their ratio to the total would be quite small.

Q. The stateroom itself was quite small as rooms go?

A. Yes.

Q. How many cubic feet did you figure for that state-room?

A. 855.

Q. Isn't it a fact that at least 200 cubic feet could be deducted for the bunks and these other things which took up space in there?

A. I can't answer that without knowing the dimensions of these articles, but let me suggest that the dresser would not occupy much space; the doors are hollow and gas would seep into that space the same as the rest of the room; you can't figure the dresser as a solid object.

Q. Do you know if the drawers were empty at that time?

A. No.

Q. Assuming for the purpose of revising your figures that 200 cubic feet could be deducted for objects in the room, that would leave you 655 cubic feet?

A. Yes.

Q. After revising your calculation how much percentage of saturation would you have?

467 A. It would be 1.39 instead of 3/10th per cent. that I had, which would be 39 parts in 10,000.

(By Mr. Parmer):

Q. And the figure of 30 parts to 10,000 was just for all of the product that went into the one room?

Mr. Mershon:

Just a moment, please.

Mr. Parmer:

I am discussing that experiment now that we have revised that one.

(By Mr. Mershon):

Q. Before you started on this experiment had the motors been run recently or was your bilge clear of any suggestion of carbon monoxide gas so that you could start fresh and clear?

A. I don't know how recently they were run previous to this test; they probably told me at the time but it escaped my memory.

Q. The tests where you were building up carbon monoxide gas into the bilges to see how much would get into the stateroom, did you start with any aid of gas in the bilge or did you start clear and put gas in for two hours and then measure it?

A. I do not recall that. As far as my experiment went the engines ran two hours, plus enough time to get our gas in the five-gallon bottle. I cannot answer that.

Q. Then you are not familiar with the conditions surrounding that experiment, or may we not say that the result represented only what came out of the hole in the pipe, Exhibit 6, over the two hour period?

A. We made this test under the supervision, 468 you might say, of Mr. Coleman, and the Chief was asked to duplicate conditions as nearly as possible as they existed at this time.

Q. You only know that from what somebody told you?

A. Yes. I know what gas would get in the room; I don't know what the conditions were that they were trying to duplicate, but they did presumably.

Q. If there had been a residue of gas in the bilge of that boat hanging over from operations of a few hours previous, and then assuming that your experiment contemplated starting with a fresh clean bilge, you would have found a greater percentage of saturation or concentration in that room at the end of the two hours referred to in your experiment than you actually found?

Mr. Parmer:

Assuming what condition, Mr. Merchon, with regard to the windows in the room?

Mr. Merchon:

I am just assuming that—

Mr. Parmer:

You might assume that the windows and the door of the room were closed while this reservoir of gas was being built up, and also that the same condition was maintained after the experiment begun.

Mr. Merchon:

I will withdraw the question.

(By Mr. Merchon):

Q. How long did it take you to clear the stateroom and the bilge of these fumes after the motors had run the two hours referred to in your experiment?

A. We didn't even stay there to find that out.

Q. Was there any reason why you should
469 not have stayed and checked it?

A. I do not think of any reason now why. One reason was that I was hungry.

Q. Did you have a headache?

A. No, sir.

Q. You didn't have a headache?

A. No.

Q. After you took your specimen, through that hose did you open the door and go in there and sniff around to see if you could smell the gas?

A. We didn't have to go inside to smell the gas; you could smell it from the outside.

Q. How long did you stay there?

A. I don't know.

Q. Did you go back later to see if you could smell it?

A. No.

Q. Do you know how long the gas and the fumes would stay in the stateroom and in the bilge from your two hours running before they would clear out complete?

A. No. The windows and the doors were open.

Q. Was there any prevailing breeze across that boat as you were making these tests?

A. I do not recall that.

Q. Which part of the boat was moored to the dock or the shore when the motors were running the two hours, was it the stern, the bow or the side?

A. My memory is that it was moored at the
470 stern and bow. As I remember it we were parallel to the dock while this was going on, and I don't think we swung out into the stream.

Q. Isn't this a fact: that if a motor is turning up 550 revolutions per minute; if the motor is turning in the boat and the boat is free and is proceeding through the water and is giving away before the churning of the propeller,—now under those conditions isn't there less pressure on the motor than there would be if your boat were anchored solid and not giving way to the pressure of the propeller, and the motor was making the same number of revolutions—

A. You mean pressure through the exhaust?

A.[Q.] Yes, or compression on the cylinders of the motor itself, each and both?

A. There would doubtless be more pressure from the exhaust pipe if you were not pulling away from it. I don't know as I can answer about the condition of the propeller.

Q. You made the observation while ago that when the motors were operating under load the better combustion was obtained?

A. Yes.

Q. So that when standing still and the motor is working under greater pressure you ought to get better combustion of your gas than when the boat is sloshing through the water and the motor is getting less condensation?

A. I do not know if that follows or not, but it doesn't in the case of automobiles. I don't know about that.

Q. My dear sir, the principle of operating
471 an automobile we both know is different, because when an automobile is standing still and the motor is running, the motor is not connected to anything. I call your attention to the dissimilarity of the two propositions. I am asking you as a chemist who has made the statement that combustion is better when you have pressure on your motors—

A. I don't think I will try to answer that question. I am not a mechanic enough to answer it.

Q. Then you are not taking the position that there was poorer combustion when you took this test of the gas than there would have been under operating conditions, with the boat moving through the water and the engine turning the same number of revolutions per minute?

A. I am not in a position to make a positive statement.

Q. Did you make any?

A. You drew the proposition between the automobile and the boat, and that was my firm thought, but since you raised the question I don't know.

Q. Aren't you as a logical scientist pretty well convinced that it does not?

A. I don't know. There are many factors entering into it.

Q. An automobile idling would be analogous to a motor in a boat idling with the propeller disconnected, would it not?

A. It sounds logical.

Q. In making your experiment did you pay any attention to the hole at the other end of the pipe,
472 Exhibit 6, about two and half feet from the end?

A. No, I don't believe I know anything about that. Is that on the same pipe that the other hole is in?

Q. That is on the same pipe.

A. No, I didn't see that.

Q. Isn't it a fact that in making this experiment with the hose against the hole in the exhaust pipe through which water and gas would come, that water and gases escaped around the contact of the hose to the hole in the exhaust pipe and flowed over the outside of the rubber hose, and isn't it also a fact that gas must likewise have escaped and not gone through the hose?

A. You might assume it probably would, but the gas, as I stated while ago, being lighter than water, that is, the gas being lighter, it would naturally rise to the hose, and I think you would have some water escape around the edges without necessarily losing gas.

Q. If the pressure was sufficient to force water out through the contact between the hose and the pipe, wouldn't that same pressure be sufficient to force out with that water the gas which was lighter than air and wouldn't that have a natural tendency to rise in any event?

A. It might.

Q. Is it safe to assume, therefore, that if you lost water in making that experiment that you also lost some gas

that came out of that pipe that didn't get in that five-gallon jar?

473 A. I don't think you can assume that is necessarily so, but it would seem rather probable I suppose.

Q. And there is no way to tell how much gas you may have lost that came out of the hole in the pipe that did not get into the bottle?

A. No, I would not be able to testify to that.

Q. You made no allowance in your experiment for any possible loss of gas at the opening in the pipe where it contacted with the hose?

A. No, sir.

Q. What size was that laboratory hose with relation to the hole in the pipe in diameter?

A. 3/8 inch hole as I recall.

Q. That means 3/8 of an inch diameter?

A. Yes.

Q. What was the size of the hole?

A. I didn't measure it.

Q. For that experiment to have been properly conducted that hose should have been larger than the hole in the pipe to completely surround it?

A. That would have made it more perfect.

Q. Do you know whether that was the case?

A. No. Chief Blount will have to testify to that. I don't know now whether the hole is the same size as it was then or not. I know that we removed the asbestos at the time when we were making the test. I

474 wasn't able to handle both ends of the hose at the same time and I couldn't say absolutely what happened at his end.

Q. In other words, you can take any set of facts and reach a result, but in order for the result to mean anything the conditions and the figures themselves have to be proper ones?

A. I am morally sure that there was no material loss there. I couldn't swear there was no loss, but I am morally positive that there was no material loss. Any such tests, as I said before, is bound to be imperfect, but I believe the essential features of it can be entirely relied on.

Q. Do you know whether this motor had been operated from the middle of March until about the 25th of August when you made this test?

A. No, sir.

Q. Do you know whether the condition of a motor has anything to do with the amount of gas in its exhaust pipe, carbon monoxide gas?

A. The more efficient it is the less you have.

Mr. Mershon:

I believe that is all.

The Court:

When you were conducting the two-hour test water was escaping through that hole, wasn't it?

The Witness:

Water was coming out, yes.

The Court:

Did it accumulate enough there during that two-hour period so that you would have to pump out the bilges?

475 The Witness:

Not that I know anything about. I did not notice any unusual accumulation.

The Court:

There was not enough that escaped there in the two hours to cause the use of the pump?

The Witness:

I do not know of my own knowledge.

The Court:

What I had in mind was this: I do not know whether it would make any difference if there was enough water accumulating in the bilge to come up and cover the pipe—whether in pumping through the pipe it would be affected by the presence of water over the pipe? I do not know.

The Witness:

Say that again, Judge. Do you mean whether the amount of water in the bilge covering the pipe would affect the escape of gas so as to make the amount of gas different?

The Court:

Yes—to cause it to flow more naturally through the pipe rather than escape into the bilge?

The Witness:

Well, I don't think there would be much difference either way. I would say that the water would cause a certain pressure, and it would probably be slightly less in the water than without the water. I believe there would be a slight difference there, but I do not think there would be any serious difference.

By Mr. Parmer:

Q. Mr. Walker, how was it at the time you conducted this test; was the hose under water or was it above?

A. You mean the pipe?

476 Q. I mean the pipe and the hole from which the gas was coming. Was it under water or was it above?

A. I won't be sure about that; I believe the pipe was partly submerged under water.

By Mr. Mershon:

Q. Did you run this hose along the side of the door to the stateroom?

A. Which hose?

Q. The hose through which you later took your sample of gas out of the stateroom after the motors had been running two hours. Did you have to crack the door of the stateroom in order to run that hose out?

A. Very slightly.

Q. Was there any crack at all around the door through which gas and air could escape into the hall?

A. Probably a little crack there.

Q. Where did you spend your time during the two hours that you were filling the stateroom?

A. We went up and sat down part of the time.

Q. On the boat?

A. Yes.

Q. In the dining-room, salon or hall or the upper deck or just where?

A. I don't know just where, but we stayed down where we could keep this door under observation. I do not recall the arrangement of the boat well
177 enough to say just where we stayed.

Q. Do you think you stayed for two hours in the lower part of the boat while you were filling the bilge with gas?

A. Not necessarily in that part.

Q. You took special care to see that you didn't get any of that gas in your lungs?

A. As I recall it, we didn't have anything of that kind at all. I don't think I smelled it at all.

Q. Do you know where you were during the two hours that you were filling the bilge with gas?

A. I don't recall the details, but I know we were right around it, around the boat there where we could keep tab on what was going on.

Q. Do you know whether you were on the boat or whether you were on the dock up there?

A. We were on the boat.

Q. You don't know whether you were on the after part or forward part?

A. I think most of the time was spent on the forward part, because there happened to be chairs to sit on there, and as I recall it we had a clear view through the hallway to the rear door.

By Mr. Parmer:

Q. Mr. Walker, in answer to one of Mr. Mershon's questions you were in doubt as to whether a boat which
478 was moving under its own power put more of a strain on a motor than when the boat was at dock and not moving?

Mr. Mershon:

I object to the question because it is not based upon the question that I asked the witness, in that the element is omitted that the motor was turning up the same revolutions.

(By Mr. Parmer):

Q. Mr. Walker, I will ask you to assume in both cases that the motor is turning up the same number of revolutions. Were you somewhat in doubt as to whether a greater strain was on the boat when the boat was moving than when the boat was idle at its pier?

A. As I recall it, the doubt I expressed was about the pressure through the exhaust pipe and therefore on the cylinders. I don't know as I was asked that question.

Q. Do you understand that in order for a motor to move a heavy object like a boat that there is a greater strain on it than when it does not have to move it?

A. That is what I would suppose. I would suppose that the propellor in that case not moving it would rotate

in the same channel, so to speak, and would not develop very much strain on the motor, but I do not believe I feel competent to answer just how great the difference would be.

Q. But you appreciate that there would be a greater load on the motor when the boat was moving or as a consequence of its moving?

A. It must be, yes.

Q. And in that sense is the movement of a boat and the load that puts upon the motor analogous to
479 the load which a moving automobile puts on a motor?

A. That is my version.

Q. The question was asked with respect to whether any gas was lost during this test in which you endeavored to determine by means of the hose and the bottle the rate at which gas came from this hole in the pipe. Well now who was able the better to tell whether gas was lost, you or the man that was holding the hose?

A. I wasn't able to tell at all.

Q. Whether any gas was lost or not depends upon how the hose was held?

A. Yes, sir.

Q. If it was held tight enough to keep the gas from coming out Mr. Blount can tell us that?

A. Yes.

Q. And you cannot?

A. No, sir.

Q. Now does the fact that Mr. Blount held a cloth in connection with the hose close to the pipe and that that cloth became wet in holding back the water, does that mean that gas was emitted as well?

A. No; the cloth is a very efficient—a wet cloth is a pretty efficient binding gasket.

Q. A seal?

A. Yes.

480 Q. Mr. Walker, I want you to look at your worksheet which I think you have brought with you. I call your attention to the fact that in giving us the time during which you allowed gas to go into the bilges for the purpose of allowing it to enter into the rooms you gave us the figure of two hours. Now I want you to look at your figures and see if that was the time that you used in arriving at your conclusions?

A. What figures are you referring to?

Q. I am referring to your conclusion with regard to the concentration, the actual concentration, which you found in the room after it had been sealed up; in other words, what I want to know is whether it was for two hours that the motors were allowed to run during that test or was it for a longer period?

A. According to my record here it is two hours, unless I copied it erroneously from my formal report that I made at the time. Two hours is what I have on this.

Q. Did that figure of two hours enter into your computation with respect to the amount of gas which was in the room?

A. No, no.

Q. That had nothing to do with that computation?

A. No.

Q. That was your memorandum with regard to how long the motor was run for the purposes of the test?

481 A. Yes. If I understand you right, the concentration we found in that room at the end of the test had nothing whatever to do with, whether it took two hours or one hour. When we arrived at that computation that was a definite fixed figure.

Q. Who was giving you instructions with regard to what tests would be made and how long the motors should be run in conjunction with the particular tests you were making?

A. Mr. Coleman. I think the Chief and the Captain both were consulted. Mr. Coleman was the man engineering it, in charge of it.

Q. Do you remember at that time that you consulted the log book or if the log book was consulted in order to determine the time the test should be run?

A. I don't remember that; I don't think I had anything to do with that; the others probably did.

Q. Who was holding the watch and who was keeping time?

A. Mr. Coleman was right by me and we both mutually kept time on it, but he actually held the watch.

Q. Was it Mr. Coleman who looked after such things as closing the windows and opening the doors throughout the tests?

A. Yes. He was the one that told what the conditions were that we wanted to duplicate. I don't know whether he personally closed the windows, but he was the one who said what was to be done.

Q. Did you pay any attention to the Chief when he was holding that hose against that hole, when he was trying to escape being burned by the hot water?

482 A. Yes, I recall very distinctly what a bad or difficult job he had in acquiring the position he had to get in to reach it.

Q. Did you note the position of his hands underneath or anything like that?

A. No, I didn't see that.

Q. You were some distance away from him?

A. Yes.

Q. Watching your bottle?

A. Yes. He was at the other end of the hose.

Q. I don't know whether you testified to this or not—I know that you testified with regard to the cubical contents of the room, but did you testify in regard to the dimensions as you received them from Mr. Coleman?

A. Yes.

Q. You got those from Mr. Coleman?

A. Yes, sir.

Q. Now let me see if I can recall to your recollection where you stayed while this test, which occupied roughly two hours, was going on. Do you recall that you spent any of the time up on deck?

A. I would not say positively about that, but my memory is that we stayed below where we could observe the door and see what was going on, but it is possible we didn't stay there all of the time. There was no-
483 body else around there; we were all together continuously.

Q. You were all together sitting in chairs some place?

A. That is my recollection of it.

Q. But you think it was below that you were all sitting in chairs?

A. I think so but I won't be sure about it.

Q. Who were sitting around at the time?

A. Mr. Coleman, Mr. Blount, Captain Roberts and myself.

Q. Now this hose which ran from the head of the port bed in the after-stateroom and out through the door during this two-hour test,—will you tell us whether, while the test was going on, that hose was pinched?

A. It is my firm belief and memory that it was.

Q. It was pinched?

A. Yes.

Q. When you came to the point where you wished to find out the concentration of gas in the room what did you do then in order to get the gas from the hose?

A. We naturally had to release the door enough so that it did not pinch the hose.

Q. When you said that there was a crack between the door and the frame, did you mean to say that there was a crack there thru which you could see into the room?

A. Nothing like that; it was a very little rubber-hose and it flattened out. I wouldn't say that there
484 was no crack, but there was probably a small crack on account of the hose.

Q. By reason of the thickness of the hose and the pinching of it?

A. Yes, sir.

Mr. Parmer:

That is all I have with this witness.

Re-Cross Examination.

By Mr. Mershon:

Q. That was the hose that you connected with the after stateroom and through which you drew out some gas. Was that the same hose that you used in taking the exhaust gas from the port pipe?

A. No, sir.

Q. Was the hose that you used in taking the exhaust gases from the pipe a flexible hose?

A. It was flexible, but a much heavier hose than this other one.

Q. In order for Mr. Blount to make a firm contact against the pipe was it necessary for him to pinch that hose?

A. He didn't pinch it.

Q. In order to do that would he not have to take a close, firm grip on it and thereby pinch it through its diameter?

A. No, sir. This hose that we used there was what we refer to in the laboratory as the Brann hose; it is quite stiff and heavy, yet flexible enough to be manipulated. It was used for such purposes as that.

Q. Now you say in this experiment where
485 you let the gas come out of the hole in the exhaust pipe into the bilge and up into the after stateroom you let the motor run for two hours?

A. Yes, sir.

Q. And the figure which showed the concentration of gas in the after stateroom is based upon a two-hour run of the motors?

A. No, that figure of two hours has nothing to do with that figure; that figure of concentration in the stateroom is simply what was in the stateroom at the end of the two-hour period.

Q. All right, I agree with you there. If you had run the motors for three hours then you would have had more concentration in that stateroom than in the two hours?

A. Certainly.

Q. So I am asking you now what would be the proportionate rate of increase of concentration of carbon monoxide gas in the after-stateroom as the length of time that the motors were run should be increased?

A. I couldn't answer that; there would be too many factors bearing on it.

Q. It would be greater the longer the motors were run?

A. Yes, sir.

Q. And in your experiment your figures are based on two hours' running?

A. Yes, sir.

486

Re-Direct Examination.

By Mr. Parmer:

Q. Then you are right about the two hours?

A. Yes, sir.

Q. But Mr. Coleman was the man who was keeping the time?

A. Yes; he and I were together or supposed to be. If I fell down on that I don't know it. According to my recollection it was two hours.

Q. That is your understanding?

A. Yes.

Re-Cross Examination

By Mr. Mershon:

Q. Do you mean to say that you are not telling the Court this experiment was based on a two-hour running of the motors?

A. My figures are based on the two-hour period.

Q. You made a record of the two hours at the time?

A. Mr. Coleman had the watch and he and I were together all the time during this period. I have got it down on my notes as two hours. If he disagreed with me on that I didn't know it, and I never heard of it before.

Q. Did you give Mr. Coleman a report of that test after you made it, showing the two-hour period?

A. Yes, sir.

Q. Was that ever called to your attention or questioned?

A. Not that I know of.

487 Mr. Mershon:

That is all. When counsel for the petitioner announces that he has concluded his testimony on that point, on the matter of these tests, we want to interpose our motion.

Mr. Parmer:

I have not concluded it.

The Court:

We will take an adjournment until 7:30 tomorrow evening.

(Thereupon an adjournment was taken to 7:30 P. M., October 8, 1937.)

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